

The Gazette of India



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NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 20th November 1954 :—

Issue No.	No. and date	Issued by	Subject
268	S. R. O. 3417, dated the 21st October, 1954.	Election Commission, India.	Election Petition No. 110 of 1952.
269	S. R. O. 3418, dated the 15th November, 1954.	Ministry of Home Affairs.	Proclamation by the President regarding the State of Andhra.
	S. R. O. 3419, dated the 15th November, 1954.	Ditto.	An Order by the President regarding the State of Andhra.
270	S. R. O. 3420, dated the 21st October, 1954.	Election Commission, India.	Election Petition No. 22 of 1953.
271	S. R. O. 3421, dated the 16th November, 1954.	Ditto.	Civil Appeal No. 156 of 1954.
272	S. R. O. 3422, dated the 17th November, 1954.	Ministry of Commerce and Industry.	Appointment of representatives on the Board of Directors of the East India Cotton Association Limited, Bombay.
273	S. R. O. 3447, dated the 20th November, 1954.	Ministry of Food and Agriculture.	The Central Government authorises the District Magistrate, Champaran to exercise control over the Sugauli Sugar Works Limited, in respect of production and supply of Sugar.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of this Gazette.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

MINISTRY OF HOME AFFAIRS

New Delhi, the 19th November 1954

S.R.O. 3454.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution, and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rule:—

“Where the Central Government is satisfied that the operation of any rule regulating the conditions of service of Union Government servants, or any class of such Government servants, causes undue hardship in any particular case, it may by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

In this rule, the expression “Union Government servants” means all persons whose conditions of service may be regulated by rules made by the President under the proviso to article 309 or clause (5) of article 148 of the Constitution.”

[No. 108/54-Ests.(A).]

S. B. BAPAT, Joint Secy.

New Delhi, the 20th November 1954

S.R.O. 3455.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, read with articles 313 and 372 thereof and paragraph 19 of the Adaptation of Laws Order, 1950, the President hereby directs that the following further amendments shall be made in the notification of the Government of India in the late Home Department No. F.9/2/33-Ests., dated the 9th January, 1934, namely:—

In the Schedule to the said notification, for the entries under the heading “Department of Industries and Labour”, the following entries shall be substituted, namely:—

Conciliation Officer (Central)	Secretary, Ministry of Labour.	Chief Labour Commissioner (Central)	(i) to (v)
		Secretary, Ministry of Labour.	All
Assistant Labour Commissioner (Central) (only in respect of the post which has not been included in the Central Secretariat Service.	Secretary, Ministry of Labour.	Chief Labour Commissioner (Central)	(i) to (v)
		Secretary, Ministry of Labour	All
Labour Inspector (Central)	Chief Labour Commissioner (Central)	Chief Labour Commissioner (Central)	All**

[No. 7/19/54-ESTS.]

S.R.O. 3456.—In exercise of the powers conferred by the proviso to article of the Constitution, read with articles 313 and 372 thereof and paragraph 19 of the Adaptation of Laws Order, 1950, the President hereby directs that the following further amendment shall be made in the rules published with the notification

of the Government of India in the late Home Department, No. F.9-19/30-Estt., dated the 27th February, 1932, namely:—

In the Schedule to the said rules, under the heading "Commerce Department", the following sub-heading and entries thereunder shall be inserted, namely:—

"Office of the Textile Commissioner, the Branch Secretariat (Textiles), the Central Marketing Organization (Handlooms) the Central Designs Section (Handlooms) and the All India Handloom Board Secretariat.

Class III Posts

Superintendent, Division Clerk-in- Charge Technical As- sistant (Gr. I and Gr. II), Economic -cum-Cos- ting Investigator, Statistical Investiga- tor, Upper Division Clerk, Lower Divi- sion Clerk, Steno- grapher, Copyist, Reporter, Motor Car Driver, Telephone Operator, Inspector, Assistant, Designer, Weaver and Draughts- man.	Textile Commis- sioner and Ex- Officio Joint Sec- retary.	Textile Commis- sioner and Ex- Officio Joint Sec- retary.	All Secretary, Minis- try of Commerce and Industry.
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Class IV Posts

Carpenter, Daftry, Peon, Gastetner Operator, Hamal & Sweeper, Care-taker, Chowkidar.	Under Secretary to the Government of India, Admi- nistration.	Under Secretary to the Government of India, Admi- nistration.	All Textile Com- missioner and Ex- Officio Joint Sec- retary."
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[No. 7/17/54-Estt.]

S.R.O. 3457.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, read with articles 313 and 372 thereof and paragraph 19 of the Adaptation of Laws Order, 1950, the President hereby directs that the following further amendment shall be made in the notification of the Government of India in the late Home Department No. F.9/2/33-Ests., dated the 9th January, 1934, namely:—

In the Schedule to the said notification, after the entries relating to 'Indian Tariff Board', the following heading and entries thereunder shall be inserted, namely:—

"Office of the Textile Commissioner, the Branch Secretariat (Textiles), the Central Marketing Organization (Handlooms) the Central Designs Section (Handlooms) and the All India Handloom Board Secretariat.

1. Assistant Director (Grade II)	}	Textile Commis- sioner and Ex- Officio Joint Secretary.	Textile Commis- sioner and Ex- Officio Joint Sec- retary.	All'
2. Research Officer				
3. Expert Designer				

[No. 7/17/54 Estt.]

S.R.O. 3458.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, read with articles 313 and 372 thereof and paragraph 19 of the Adaptation of Laws Order, 1950, the President hereby directs that the following further amendment shall be made in the notification of the Government

of India in the late Home Department No. F.9/2/33-Ests., dated the 9th January, 1934, namely:—

In the Schedule to the said notification, under the heading "Department of Industries and Labour" the following sub-heading and entries thereunder shall be inserted at the end, namely:—

"The Gorakhpur Labour Organisation

Class II

(1) Labour Officer (Depot)	} Regional Director of Resettlement and Employment, U. P.	Regional Director of Resettlement and Employment, U. P.	All "
(2) Financial Controller			
(3) Record Officer			
(4) Welfare Officer (Raniganj circle)			
(5) Welfare Officer (Jharia circle)			
(6) Welfare Officer (Singareni Hyderabad)			
(7) Labour Officer			
(8) Chief Medical Officer			
(9) Any other class II post under the Organisation.			

[No. 7/18/54-Ests.]

S.R.O. 3459.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, read with articles 313 and 372 thereof and paragraph 19 of the Adaptation of Laws, Order 1950, the President hereby directs that the following further amendment shall be made in the rules published with the notification of the Government of India in the late Home Department No. 9-19/30-Ests., dated the 27th February, 1932 namely:—

In the Schedule to the said Rules, under the heading 'Department of Industries and Labour' the following sub-heading and entries thereunder shall be inserted at the end, namely:—

"The Gorakhpur Labour Organisation.

Class III

Labour Depot.

Office Superintendent	Additional Deputy Director (Labour)	Additional Deputy Director (Labour)	All Regional Director of Resettlement and Employment, U. P.
Accountants			
Store Accountant			
Claims Clerks			
Nazir-cum-bill clerk			
Record Keeper			
General Clerk			
Typist			
Recruiting clerks			
Cashier			
Accounts Clerks			
Treasurer			
Driver			

Bichhia Collecting Centre.

General Assistant
Camp Clerk
Camp Supervisor

Medical Establishment.

Medical Officer
Clerk
Compounders
Driver

Additional Deputy Director (Labour) Establishment

Stenographer
Welfare Staff (Coalfields)
Stenographer

Record Office.

Assistant Record Officers .
 Accountants . . .
 Clerks . . .
 Stenographers . . .
 Cashier . . .

Sub-Depot at Amargarh

Clerk full time

or

Part time

Any other post in the Organisation whose pay, if fixed, or the minimum of whose pay, if on a time scale exceeds Rs. 60/-p.m.

*Class IV**Labour Depot.*

Dafti

Addl. Deputy Addl. Deputy
 Director (Labour) Director (Labour)

All Regional Director
 of Resettlement
 and Employment
 U. P., Lucknow.

Orderlies . . .
 Peons . . .
 Chowkidars . . .
 Porters . . .
 Waterman . . .
 Sweepers . . .

Bichhia Collecting Centre.

Mistri for water pumps .
 Jamadar (Sanitary) . .
 Jamadar (Utensils) . .
 Chowkidars and peons . .
 Cooks . . .
 Sweepers . . .

Medical Establishments

Compounders . . .
 Nursing orderlies . . .
 Chowkidars . . .
 Kahars . . .
 Cook . . .
 Ward Boys . . .
 Sweeper . . .

Addl. Deputy Director (Labour Establishment).

Orderlies . . .

Welfare Staff (Coalfields)

Orderlies . . .

Record Office.

Dafti . . .
 Orderlies . . .
 Peons . . .
 Chowkidars . . .
 Waterman . . .
 M. li . . .
 Sweepers . . .

Sub-depot at Amargarh

Escorters-cum-peons. .

[No. 7/18/54-Ests.]

J. P. MAHNA, Under Secy.

New Delhi, the 23rd November 1954

S.R.O. 3460.—In exercise of the powers conferred by section 3 of the Indian Passport Act, 1920 (XXXIV of 1920), the Central Government hereby directs that the following further amendment shall be made in the Indian Passport Rules, 1950, namely:—

To sub-rule (iii) of rule 5 of the said Rules, the following proviso shall be added, namely:—

“Provided that when issued by or on behalf of any such Government to any person proceeding to India for, or in connection with missionary work, it shall also have been endorsed by a proper Indian or British diplomatic, consular or passport authority by way of visa for India valid for such period as may be specified therein.”

[No. 6/28/52-F.I.]

FATEH SINGH, Dy. Secy.

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 15th November 1954

S.R.O. 3461.—In exercise of the powers conferred by section 8 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (XLI of 1948), the Central Government hereby directs that the following further amendment shall be made to the Diplomatic and Consular Officers (Fees) Rules, 1949, namely:—

In Schedule I to the said Rules, after item 65, the following item shall be inserted, namely:—

“65A. For attesting the signatures of two qualified foreign medical practitioners on a medical certificate issued by them in the form prescribed in Rule 256 of the Supplementary Rules.—Re. 1-0-0”.

(DCOFR/AM/7)

[No. 677-Cons.]

I. S. CHOPRA, Joint Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 3rd November 1954

S.R.O. 3462.—In exercise of the powers conferred by section 37 of the Foreign Exchange Regulation Act, 1947 (VII of 1947), the Central Government hereby directs that the following further amendments shall be made in the Foreign Exchange Regulation Rules, 1952, namely:—

In the Second Schedule to the said Rules, under the column headed “Names of countries”—

- (a) under the sub-heading “B. Bilateral Account countries”, in item (i), the word “Iran” shall be omitted; and
- (b) under the sub-heading “D. Transferable Account Countries”, in item (i), the words “excluding the French possession in India” shall be omitted.

[No. F.32(1)EF.II/54.]

F. C. DHAUN, Dy. Secy.

New Delhi, the 17th November 1954

S.R.O. 3463.—In exercise of the powers conferred by the proviso to article 309 read with articles 313 and 372 of the Constitution of India and Paragraph 19 of the Adaptation of Laws Order, 1950, the President hereby directs that in “Part ‘B’ Lower Grade of the Schedule of appointments carrying special additional pension, accompanying article 475A of the Civil Service Regulations”, the entry “Educational Commissioner, Government of India” shall be omitted.

[No. 9542-E.V./54.]

K. S. GANAPATI, Dy. Secy.

New Delhi, the 25th November 1954

S.R.O. 3464.—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (X of 1949), as applied to the French Establishment at Pondicherry by the notification of the Government of India in the Ministry of External Affairs, No. S.R.O. 3315, dated the 1st November 1954, and on the recommendation of the Reserve Bank of India, the Central Government hereby

declares that the provisions of Part II of the said Act, other than the provisions contained in sub-section (2) of section 27 and section 35, shall not apply to the Banque De L'Indochine, Pondicherry, upto and including the 31st March, 1955.

[No. F.4(223)-F.I/54.]

S. G. BARVE, Joint Secy.

CHARTERED ACCOUNTANTS

New Delhi, the 19th November 1954

S.R.O. 3465.—In pursuance of clause (iv) of sub-section (1) of section 4 of the Chartered Accountants Act, 1949 (XXXVIII of 1949), the Central Government hereby directs that the following further amendments shall be made in the notification of the Government of India in the late Ministry of Commerce, No. 63(15)-Law(B)/50, dated the 24th October, 1950, namely:—

In the said notification—

(1) in paragraph A,—

(i) clauses (1) and (2) and the *Explanations* thereto shall be omitted and clause (3) shall be renumbered as clause (1), and in the said clause (1) as so numbered, for the word and figures “1st July, 1940”, the words, “date of commencement of the Act” shall be substituted;

(ii) for sub-clause (ii) of the Explanation to clause (1) as so renumbered, the following sub-clauses shall be substituted, namely:—

“(u) For the purpose of computing service or practice, referred to in this clause, every year of service as Articled Clerk either under a Registered Accountant entitled or permitted to train Articled Clerks under the Auditor's Certificates Rules, 1932 or under a member of the Institute of Chartered Accountants of India entitled to train Articled Clerks under the Chartered Accountants Regulations, 1949, or partly under such Registered Accountant and partly under such member shall be reckoned as two years of service or practice, as the case may be, and every year of audit service rendered under a Registered Accountant or a practising member of the Institute of Chartered Accountants of India or partly under such Registered Accountant and partly under such practising member of the Institute shall be reckoned as one year of service or practice, as the case may be, fractions of a year being ignored.

(iii) Any period of apprenticeship served under the Regulations for the award of the Government Diploma in Accountancy and duly registered with the Accountancy Diploma Board, Bombay, shall be reckoned as service as an Articled Clerk under a Registered Accountant; or”;

(iii) after the Explanation to clause (1) as so renumbered and amended, the following clause shall be inserted, namely:—

“(2) he shall have been in practice on the date of commencement of the Act and shall have at the time of his application for enrolment—

(a) a minimum practice of five years; and

(b) at least five public companies with limited liability with a total paid up capital of 20 lakhs under his audit during each of the said five years”;

(2) for paragraph B, the following paragraph shall be substituted, namely:—

“B. In the case of a person who has not passed one of the examinations mentioned in paragraph A, he shall have been in practice on the date of commencement of this Act and shall have at the time of his application for enrolment either—

(a) (i) a minimum practice of ten years; and

(ii) at least fifteen units, including a minimum of five public companies with limited liability with a total paid up capital of Rs. 20 lakhs for all the units put together, under his audit; or

(b) (i) a minimum practice of five years; and

(ii) at least five public companies with limited liability with a total paid up capital of Rs. 20 lakhs under his audit during each of the said five years.”

[No. 61(2)-ICA/53.]

P. D. KASBEKAR, Dy. Secy.

MINISTRY OF FINANCE (REVENUE DIVISION)

INCOME TAX

New Delhi, the 17th November 1954

S.R.O. 3466.—The Central Government hereby direct that the following further amendment shall be made in the list appended to the Notification of the Government of India in the Finance Department (Revenue Division) No. 34-Income-tax, dated the 23rd November, 1946, namely:—

In the said list after the entry No. 13 under the sub-head 'Scientific and Industrial Research Associations' the following entry shall be inserted namely:—

"14. Bombay Textile Research Association, Bombay."

[No. 63.]

G. L. POPHALE, Dy. Secy.

CUSTOMS

New Delhi, the 27th November 1954

S.R.O. 3467.—The following draft of certain rules which the Central Government proposes to make in exercise of the powers conferred by section 43B of the Sea Customs Act, 1878 (VIII of 1878), is published as required by sub-section (3) of section 43B of the said Act, for the information of persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration after one month from the date of publication of this notification in the official Gazette.

Any objection or suggestion which may be received from any person in regard to the said draft within the period aforesaid will be considered by the Central Government.

DRAFT RULES

1. *Short title.*—These rules may be called the Customs Duties Drawback (Radio Receivers) Rules, 1954.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

(a) 'the Act' means the Sea Customs Act, 1878 (VIII of 1878);

(b) 'imported materials' means the following materials imported on payment of customs duty by a registered manufacturer, namely:—

(i) valves, ballast tubes, magic eye, valve bases, gang condensers, electrolytic condensers, ceramic condensers, carbon resistances, iron dust cores, phono plugs, phono jacks, banana plugs and plastic moulded grills for radio receivers;

(ii) paper condensers, mica condensers, wire wound resistances, intermediate frequency transformers, mains transformers, audio transformers, chokes, coils and plastic cabinets for radio receivers provided that all the components bear clear identifiable marks establishing their foreign origin to the satisfaction of the Customs Collector; and

(iii) components for the assembly in India by a registered manufacturer of loudspeakers, potentiometers and band changing switches for radio receivers;

(c) 'quarter' means a period of three months beginning with the first day of January the first day of April, the first day of July and the first day of October;

(d) 'radio receivers' means radio or wireless receivers assembled or manufactured in India by a registered manufacturer and exported or shipped as stores on board a ship proceeding to a foreign port by such registered manufacturer;

(e) 'registered manufacturer' means a manufacturer or assembler in India of radio receivers, registered under rule 5;

(f) 'section' means a section of the Act.

3. *Goods in respect of which drawback may be paid.*—Subject to the provisions of the Act and these rules, a drawback shall be allowed in the case of radio receivers (hereinafter referred to as the goods) manufactured or assembled in.

and exported from, India or shipped as stores on board a ship proceeding to a foreign port by a registered manufacturer, in respect of all or any of the imported materials used in the manufacture of such goods.

4. *Period for which drawback admissible.*—A drawback under these rules shall be admissible for the period during which a notification under sub-section (1) of section 43B in respect of the goods is in force.

5. *Registration of manufacturers.*—(1) A drawback permissible under these rules shall apply only in respect of such goods as have been manufactured or assembled by a person who has, in accordance with the provisions of these rules, been registered for such purpose by the Chief Customs Authority or any Chief Customs Officer authorised in this behalf by the Chief Customs Authority (hereinafter referred to as the authorised Chief Customs Officer).

2. An application for registration shall be made by a manufacturer or assembler of the goods to the Chief Customs Authority or, where a Chief Customs Officer has been authorised under the last preceding sub-rule, to such authorised Chief Customs Officer.

(3) Such application shall specify the models, brands, code numbers and other particulars of the goods in respect of which registration is required and shall, in respect of each such model or brand, furnish—

(a) the description and quantity of imported materials falling under sub-clauses (i) and (ii) of clause (b) of rule 2, used in the manufacture or assembly of one unit;

(b) the description and quantity of the imported components falling under sub-clause (iii) of Clause (b) of rule 2, used in the assembly in India by the registered manufacturer of loudspeakers, potentiometers and hand changing switches required for the manufacture or assembly of one unit; and

(c) the average amount of customs duty on units of the above material and components based on the value of the material and components imported during the preceding six months and the amounts of duty paid.

(4) The Chief Customs Authority or the authorised Chief Customs Officer, as the case may be, may, if satisfied that the requirements of sub-rule (3) have been fulfilled, register the applicant as a manufacturer for the purpose of these rules.

(5) The registered manufacturer shall not vary the quantities and varieties of imported materials used in the assembly or manufacture of the different models and brands, in respect of which registration has been allowed, save with the prior permission of the Chief Customs authority or the authorised Chief Customs Officer, as the case may be.

(6) Any registered manufacturer contravening the provisions of the last preceding sub-rule shall be liable to have his registration cancelled besides any other penalties to which he may be liable under the Act and these rules.

6. *Rate of drawback.*—(1) Where the Customs Collector is satisfied that a claim for a drawback is established under these rules, such drawback shall be paid at the rate indicated hereinafter.

(2) The rate of drawback of duty admissible under these rules on the shipment of the goods in the prescribed manner shall be seven-eighths of the average amount of duty paid on all or any of the imported materials used in the manufacture or assembly of the particular model or brand of radio receivers.

(3) The drawback shall be determined by the Chief Customs Authority or the authorised Chief Customs Officer at the beginning of every quarter, in respect of each model or brand of the goods manufactured or assembled by a registered manufacturer and shall be calculated on the basis of the statements furnished by such registered manufacturer and duly verified by a Customs Officer, of the average value of the imported materials or components used in the manufacture or assembly of each such brand or model, and the duty paid thereon, such valuation being based on the value of imports in the preceding six months or such longer period in respect of any imported material as the Customs Collector may deem proper.

(4) The drawback so determined shall be in force for the quarter for which it has been determined under sub-rule (2) and shall apply to shipments made during that quarter from any port in India.

7. *Manner of allowing drawback.*—Drawback shall be allowed on the shipment of the goods from any port in India subject to the following conditions, namely—

- (a) the registered manufacturer shall make a declaration on the relative shipping bill—
 - (i) that a claim for the drawback under section 43B is being made, and
 - (ii) that the quantities and varieties of imported materials or components used in the manufacture or assembly of the models or brands under shipment have not been varied subsequent to registration except in accordance with the provisions of sub-rule (5) of rule 5.
- (b) The shipper shall in the shipping bill, furnish, in addition to information required under section 29 such additional information as may, in the opinion of the Customs Collector, be necessary for verifying the claim for a drawback, and in particular the Customs Collector may require such additional information in respect of the following matters, namely:—
 - (i) the description of the goods,
 - (ii) the model, brand, variety, code number and such similar specifications attached to the goods.

8. *Powers of Customs Collector.*—For the purposes of enforcing these rules, the Customs Collector may require a registered manufacturer to produce any books of accounts or other documents of whatever nature relating to the proportion and quantity of different imported materials used in the manufacture or assembly of the goods, the value of such imported materials and the duty paid thereon.

9. *Access to manufactory.*—A registered manufacturer of goods in respect of which a drawback is claimed under these rules shall bound to give access to every part of his manufactory to any officer of the Central Government, specially authorised in this behalf by the Chief Customs Officer or the Chief Customs Authority to enable the officer so authorised to inspect the processes of manufacture and to verify by actual check or otherwise the statements made in support of the claim for a drawback.

[No. 156.]

JASJIT SINGH, Dy. Secy.

New Delhi, the 27th November 1954

S.R.O. 3468.—In exercise of the powers conferred by section 23 of the Sea Customs Act, 1878 (VIII of 1878) and in supersession of the notification of the Government of India in the Ministry of Finance (Revenue Division) No. 125-Customs, dated the 14th October, 1954, the Central Government hereby exempts wine falling under item No. 22(3)(b) of the First Schedule to the Indian Tariff Act, 1934 (XXXII of 1934), and established to the satisfaction of the Customs Collector to be sacramental wine from so much of the duty of customs leviable thereon under the second mentioned Act as is in excess of Rs. 9-8-0 (Rupees nine and annas eight) only per imperial gallon.

[No. 155.]

E. S. KRISHNAMOORTHY, Joint Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 19th November 1954

S.R.O. 3469.—In pursuance of sub-section (6) of section 5 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue directs that the

following further amendments shall be made in the Schedule annexed to its notification S.R.O. 1214 (No. 44-Income-tax), dated the 1st July 1952, namely:—

In the said Schedule after S. N. 40, the following entry shall be inserted, namely:—

1	2	3	4	5	6
40-A	Employees of Foreign Diplomatic Missions, Consulates and Trade Commissioners and all other employees of foreign Governments having their offices in and residing in in West Bengal.	I. T. O., District III(A), Calcutta.	I. A. C., Range-VII, Calcutta.	A. A. C., A-Range, Calcutta.	C. I. T., West Bengal, Calcutta.

[No. 64.]

K. B. DEB, Under Secy.

MINISTRY OF COMMERCE AND INDUSTRY

TARIFFS

New Delhi, the 23rd November 1954

S.R.O. 3470.—In exercise of the powers conferred by section 5 of the Indian Tariff Act, 1934 (XXXII of 1934), the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the late Ministry of Commerce, No. 34-T(14)/49, dated the 29th March, 1949, namely:—

In the said notification, for the words “Mahe, Yanam and Chandernagore”, the words “Mahe and Yanam” shall be substituted.

[No. 24-T(1)/54.]

K. B. LALL, Joint Secy.

MINISTRY OF FOOD AND AGRICULTURE

(Agriculture)

CORRIGENDUM

New Delhi, the 16th November 1954

S.R.O. 3471.—In the Ministry of Food and Agriculture Notification No. F.2-9/54-Com-II dated 15th February 1954 read “Section 4(g)” for “Section 4(d)” against serial No. 1

[No. F. 21-14/54-Com-I.]

F. C. GERA, Under Secy.

MINISTRY OF HEALTH

New Delhi, the 13th November 1954

S.R.O. 3472.—The following draft of a further amendment in the Drugs Rules, 1945, which it is proposed to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs Act, 1940 (XXIII of 1940), is published, as required by the said sections, for the information of persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration on or after the 28th February, 1955.

2. Any objection or suggestion which may be received from any person, with respect to the said draft, before the date specified, will be considered by the Central Government.

Draft Amendment

In sub-rule (1) of rule 96 of the said Rules, after the words "to be labelled under this Part shall" the words "be printed or written in indelible ink and shall" shall be inserted.

[No. F.1-18/53-DS.]

CORRIGENDUM

New Delhi, the 22nd November 1954

S.R.O. 3473.—In notification of the Government of India in the Ministry of Health, No. S.R.O. 2121, dated the 18th June, 1954, published at pages 1692-1693, Part II, Section 3 of the *Gazette of India*, dated the 3rd July, 1954, for "preparation containing any such drug and any such drug supplied" read "preparation containing any such drug and any drug supplied".

[No. F.1-12/48-D.]

KRISHNA BIHARI, Under Secy.

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 17th November 1954

S.R.O. 3474.—In exercise of the powers conferred by sub-sections (1) and (2) of section 8 of the Cinematograph Act, 1952 (XXXVII of 1952), the Central Government hereby directs that the following further amendment shall be made in the Cinematograph (Censorship) Rules, 1951, namely:—

In rule 33 of the said Rules for the word "Act", the words "law in force relating to cinemas" shall be substituted.

[No. 5/11/54-FC-C.C.R.Am/14.]

D. KRISHNA AYYAR, Under Secy.

MINISTRY OF COMMUNICATIONS

(Posts and Telegraphs)

New Delhi, the 17th November 1954

S.R.O. 3475.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby directs that the following amendments shall be made in the Engineering Supervisors Recruitment Rules, 1954, published with the notification of the Government of India, Ministry of Communications No. S.R.O. 3374, dated the 16th October, 1954, namely:—

- (1) In Note 1 under rule 3 of the said rules for the words "Appendix II", the words "Appendix H" shall be substituted.
- (2) In Note 3 of rule 3, for the words "Sector Electrical Engineer", the words "Senior Electrical Engineer" shall be substituted.
- (3) In sub rule (1) of rule 19, for the words "Engineering Supervisors", the words "Engineering Supervisor" shall be substituted.
- (4) In sub-rule (3) of rule 19, for the words "Saving Bank", the words "Savings Bank" shall be substituted.
- (5) In rule 28, for the words "Syllabus for a training", the words "Syllabus for the training" shall be substituted.
- (6) In Appendix C, for the words "(Referred to in rule 18)", the words "(Referred to in rule 11)" shall be substituted.
- (7) In Appendix E, for the words "Liability to distinguish principal colours", the words "Inability to distinguish principal colours" shall be substituted.

- (8) In Appendix G, for the words "serial No. 2 and 3", the words "serial No. 1 and 2" shall be substituted.

[No. STA 41-1/54.]

H. C. SHARMA, Under Secy.

MINISTRY OF TRANSPORT

(Transport Wing)

CORRIGENDUM

New Delhi, the 14th October 1954

S.R.O. 3476.—In order of the Government of India in the Ministry of Transport, dated the 1st September, 1954, published as S.R.O. 2954 at pages 2209 of the Gazette of India Part II—Section 3, dated the 11th September, 1954.

- (1) in clause (c) of paragraph 1 at page 2209, for the words "on that subjects" substitute the words "on that subject"; and
- (2) in paragraph 2 at page 2210, in the substituted paragraph 17(1)(a), for the word "bunds" substitute the word "bunks."

[No. 55-MA(19)/54.]

S. K. GHOSH, Dy. Secy.

MINISTRY OF LABOUR

New Delhi, the 16th November 1954

S.R.O. 3477.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the Oriental Government Security Life Assurance Co., Ltd., and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

REFERENCE No. 3 OF 1954

PRESENT

Shri L. P. Dave, B.A., LL.B.—*Chairman.*

PARTIES.

Employers in relation to the Oriental Government Security Life Assurance Company Limited, Bombay.

AND

Their workmen.

APPEARANCES

Mr. Sohrab D. Vimaladai, Bar-at-Law, instructed by Mr. S. J. Banaji, Solicitor of M/s. Ardesir Hormus Dinshaw & Co.

AND

Shri S. N. Valdiya—*for the management.*

Shri T. Godiwala, B.A., LL.B., Advocate, Bombay, instructed by Shri M. R. Paranjpe, B.A. (Hons.) President, Oriental Government Security Life Assurance Co. Ltd., (Head Office) Employees Union—*For the workmen.*

AWARD

By Government of India, Ministry of Labour, Order No. IR.90(8)/54, dated 31st March 1954, an industrial dispute between the employers in relation to the Oriental Government Security Life Assurance Company Limited, Bombay, and their workmen in respect of the question whether the temporary workmen (57 in number) discharged in the beginning of 1952 are entitled to any retrenchment compensation, was referred for adjudication to this Tribunal.

2. Notices were issued to the parties and they filed their respective statements. The matter was then fixed for hearing at Bombay. After the proceedings had started, the parties entered into a compromise and produced it before me.

3. It appears that the company had engaged several persons on a temporary basis and discharged them from 1st April 1952 on the ground that they were inefficient. The workmen denied inefficiency and also urged that they were in any case entitled to retrenchment compensation. Under the compromise the management have without prejudice to its strict rights and contentions agreed to pay *ex-gratia* certain amounts to the different workmen in full, final and complete satisfaction and discharge of all their claims against the company. I was told that the amount fixed for each employee has been arrived at after having regard to length of service and the pay of each workman. In my opinion, the compromise is fair and reasonable.

4. I therefore pass an award in terms of the compromise, a copy of which is attached herewith.

The 3rd November 1954.

(Sd.) L. P. DAVE, *Chairman*,
Central Government's Industrial Tribunal,
Dhanbad.

REFERENCE No. 3 OF 1954

Terms of Settlement

It is agreed between the Oriental Government Security Life Assurance Co. Ltd., and the 57 discharged temporary workmen represented by the Oriental Government Security Life Assurance Co. Ltd. (Head Office) Employees Union Bombay that without prejudice to its strict rights and contentions and as a gesture of goodwill the company will make an *ex-gratia* payment to each of the 57 discharged temporary workmen of the sum set out against his name in the list marked Ex. No. 1 hereto making a total payment of Rs. 10,000 upon his passing in anticipation a discharge in the form annexed as Ex. No. 2 hereto.

2. The said 57 discharged temporary workmen agree to receive the respective amounts set against their respective names in the list Ex. No. 1 hereto in full, final and complete satisfaction and discharge of all their claims for compensation of any kind and nature whatsoever against the company arising out of their discharge from service by the company.

(Sd.) S. N. VAIDYA,
for the Oriental Govt. Security Life Assce. Co. Ltd.
for Manager.

(Sd.) M. R. PARANJPE, *President*,
Oriental Govt. Security Life Assce. Co. Ltd.
(Head Office) Employees' Union.

(Sd.) S. BANAJI, *Solicitor*.
M/s. Ardesir Hormus Dinshaw & Co.

(Sd.) T. GODIWALA,
Advocate for the Employees' Union.

Ex. No. 1

No.	Name	Amount of compensation
		Rs. a. p.
1.	V. V. Mistry	320 13 0
2.	J. S. Shelar	320 13 0
3.	S. K. Bhise	315 11 0

No.	Name	Amount of compensation		
		Rs.	As.	Ps.
4.	T. J. Enty	244	7	0
5.	R. V. Kulkarni	234	4	0
6.	K. Narayanswamy	234	4	0
7.	A. M. Sayed	229	2	0
8.	I. Attavar	229	2	0
9.	J. X. A. Rodrigues	229	2	0
10.	M. N. Takakhav	216	6	0
11.	K. B. Acharya	211	10	0
12.	P. A. H. T. Colaco	211	10	0
13.	N. M. Merchant	211	10	0
14.	K. D. Desai	211	10	0
15.	J. N. Raina	206	13	0
16.	R. D. Kotwal	202	0	0
17.	D. P. Shah	197	3	0
18.	R. Rajagopal	197	3	0
19.	Y. B. Pundharkar	129	14	0
20.	V. G. Jakhi	126	12	0
21.	A. Z. Kos	126	12	0
22.	P. S. Khasnis	126	12	0
23.	C. S. Vishwanathan	192	6	0
24.	P. M. Menon	192	6	0
25.	G. K. Ghanekar	192	6	0
26.	N. P. Raman	192	6	0
27.	M. B. Pandit	187	9	0
28.	L. P. Mahasuri	187	9	0
29.	H. Y. Kotkar	187	9	0
30.	S. K. Borkar	187	9	0
31.	J. A. Fernandes	187	9	0
32.	V. P. Bhatvadekar	182	12	0
33.	P. A. Gokhale	173	2	0
34.	B. U. Kumble	173	2	0
35.	R. R. Nadkarni	168	5	0
36.	K. B. Pathak	168	5	0
37.	M. S. Vinekar	188	2	0
38.	R. C. Joshi	163	8	0
39.	M. S. Deshmukh	163	8	0
40.	K. G. Trivedi	144	13	0
41.	H. H. Mhatre	144	13	0
42.	S. G. Chandorkar	144	13	0
43.	V. D. Kotnis	140	5	0
44.	D. M. Pradhan	126	12	0
45.	S. V. Nadkarni	126	12	0
46.	S. N. George	126	12	0
47.	V. Damodaran	126	12	0
48.	A. Rameshchander	126	12	0
49.	K. S. Bhatt	122	3	0
50.	S. N. Ranade	108	10	0
51.	U. K. Keer	108	10	0
52.	R. S. Dalal	108	10	0
53.	U. A. Warliyar	104	2	0
54.	S. Dhandapani	104	2	0
55.	R. V. Gurjar	95	1	0
56.	B. P. Bhagvat	55	3	0
57.	L. A. Sankaran			
Total		10,000	7	0

Ex. No. 2.

REFERENCE NO. 3 OF 1954

Received from the Oriental Government Security Life Assurance Co. Ltd., in terms of the settlement made herein between the company of the one part and

the 57 discharged temporary workmen including myself as represented by the Oriental Government Security Life Assurance Co. Ltd., (Head Office) Employees Union, Bombay of the other part the sum of Rs. _____ in full, final, and complete satisfaction and discharge of all my claims of any kind and nature whatsoever arising out of my employment with the company and discharge from service.

Dated the _____ day of _____ 1954.

[No. LR.90(8)/54.]

New Delhi, the 17th November 1954

S.R.O. 3478.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Delhi, in the dispute between certain banking companies and their workmen.

**BEFORE SRI GHANSHYAM DAS
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DELHI**

ADJUDICATION

In the matter of an Industrial dispute

BETWEEN

The employers in relation to different Banking companies and their workmen.

PRESENT:—

- | | |
|--|-------------------------------------|
| 1. Shri Shambu Dutt Sharma, <i>Manager</i> | for Laxmi Bank Ltd. |
| 2. Shri K. N. Bhatnagar | } for Hindustan Commercial Bank Ltd |
| 3. Shri H. N. Khanna | |
| 4. Shri Jagdish Narain | |
| 5. Shri B. P. Menon | for Bikaner Bank Ltd. |
| 6. Shri D. R. Monga | } for United Commercial Bank Ltd. |
| 7. Shri R. V. Govindam | |
| 8. Shri G. S. Seth | |
| 9. Shri Bishan Das, <i>Manager</i> | for Allahabad Bank Ltd. |
| 10. Shri D. A. Desai | for Bank of Baroda. |
| 11. Shri P. S. Nayak | for Canara Bank. |
| 12. Shri D. Mekechnie | for National Bank of India. |
| 13. Shri S. R. Handa | for Prabhat Bank. |
| 14. Sri Deep Chand | for Central Bank of India. |

For the workers.—

1. Shri K. B. L. Saxena, in person.
 2. Shri Sukhdish Narain, in person.
 3. Shri D. D. Banerji, in person.
 4. Shri R. N. Sharma, President, Bikaner Bank Employees Association, personally and o
 5. Shri M. B. L. Mathur and
 6. Shri C. D. Bhardwaj.
 7. Shri C. P. Ohri, in person.
 8. Shri C. D. Charan, in person.
 9. Shri Brij Lal Rawat, in person.
 10. Shri Madan Gopal Garg
 11. Shri A. R. Gupta
- } In person and represented by
Shri P. R. Bhatia, Vice-President,
Punjab, Prov. Bank Employees
Federation
12. Shri Kesho Charan in person
 13. Shri Vidya Sagar, Lakha in person and represented by Shri H. L. Puri, General Secretary
Delhi State Bank Employees Federation

- | | | |
|--|---|---|
| 14. Shri Dhari Ram, in person | } | and represented by
Shri J. N. Mehra,
President, U. P. Bank Emp-
loyees (Shahjahanpur Unit). |
| 15. Shri K. N. Tandon, in person | | |
| 16. Shri G. G. Tandon in person | | |
| 17. Shri S. N. Mehra in person | | |
| 18. Shri Bhola Ram, in person | | |
| 19. Shri B. L. Gupta, in person | | |
| 20. Shri Lachhman Satup, in person | } | in person and represented by
Shri H. D. Shenoy, General Secretary,
Canara Bank Employees, Asso-
ciation. |
| 21. Shri Kalyani Dixit, in person | | |
| 22. Shri U. S. Shenoy | | |
| 23. Shri M. B. Amin, in person. | | |
| 24. Shri Balkishen Chandey Hok, in person. | | |

AWARD

Cases of 45 workers were referred to this Tribunal by the Central Government by Notification No. LR.100(89), dated the 12th November, 1953. The said Notification was amended by Order dated the 19th December, 1953, so as to omit altogether the dispute regarding Shri C. P. Mishra, Serial No. 26 and to include the dispute as to 'Payment of increment' in the case No. 43, Shri V. S. Leekha. These cases are really the cases which have had to be readjudicated by reason of the annulment of the Sen Tribunal award and shall be taken in the order in which they appear in the Notification.

Serial No. 1—

Shri Bishwa Nath Prasad

vs.

United Commercial Bank, regarding discharge of service.

His allegations are that he was an employee of the United Commercial Bank Ltd., in the subordinate cadre as a bearer and duly confirmed in his employment, that he was retrenched but not due to any genuine trade reason, that the principle of last come first go was not applied, that since his discharge the bank had recruited many new employees in the subordinate category but no such vacancy was offered to him for re-employment. He asked for, (1) his reinstatement, (2) wages from the date of discharge to the date of re-instatement; and (3) any other relief that the court might think fit.

2. The bank pleaded that the Tribunal has no jurisdiction in respect of the dispute, because the Industrial Disputes (Bank and Insurance Companies) Ordinance, 1949 promulgated on the 30th April, 1949, prohibited reference by Provincial Government in respect of banking companies' disputes, that the termination of this worker's services took place on the 28th February, 1949 and the Provincial Government had never made any reference about this matter which meant that there was no industrial dispute regarding this matter existing on the date of the Ordinance, that the reference could be made about a dispute existing on the date of the reference, namely 12th November, 1953, that the reference was accordingly bad in law; (2) that the workman ceased to be a workman from the 1st March, 1949, the date of his retrenchment and so he was not a workman on the date of the reference and the case could not fall within the definition of Industrial Disputes in section 2(K) of the Industrial Disputes Act.

3. On the merits it was urged that there was no allegation of victimisation and that there was, in fact, no victimisation, that it was *bona fide* retrenchment and the worker was paid one month's salary and allowances in lieu of notice which he duly accepted, that this acceptance of payment would estop him from waging the present dispute and that the present claim was altogether an after thought.

4. It was explained that early in the year 1949, the bank reviewed the strength of staff in different cadres and found that the strength of staff in many branches was in excess of requirements and on that ground it decided to retrench the surplus staff, particularly, at its Calcutta office where this worker was working. It was added that the principle of last come first go was duly applied. The principles observed being:

(a) Men over 50 should be discharged in preference to younger men;

- (b) Men with bad leave records, that is, such men as asked for leave very often should be discharged in preference to others;
- (c) If none of the men came under these categories, then the person last appointed should be discharged first.

5. The following issues were framed:

- (i) Is the dispute not an industrial dispute and is the reference bad for there being no dispute in existence;
- (ii) Was the retrenchment for good trade reasons and *bona fide*;
- (iii) Was the choice of the claimant for retrenchment in accordance with the principle, 'Last come first go'.
- (iv) Shall reinstatement be the proper relief in this case;
- (v) What compensation with reinstatement or without reinstatement;
- (vi) Is the claimant barred by the principle of waiver from making the present claim?

6. *Issue No. 1.*—The contention of the bank is that there was no dispute in existence at the date of the present reference. This is wrong. The dispute was there and had been adjudicated upon by Sen Tribunal. It got a fresh lease of life, because of the annulment of the Sen Tribunal award. The Government had to order re-adjudication in consequence.

7. The argument that even before Sen Tribunal was brought into existence there was no dispute between the workers and the bank forgets the fact that the Government had on account of the general banking strike ordered the reference of cases of victimisation and discharges to be adjudicated upon by Sen Tribunal and this case was put up before it which means that the worker had raised the dispute and that the dispute must be taken to have been existence ever since the date of the retrenchment the demand for reinstatement by the workers and refusal by the Bank must be gathered from the fact of the strike of the Bank workmen and the general unyielding attitude of the Banks which forced the Central Government to have the whole dispute placed before an all India Tribunal by a comprehensive reference No. LR.2(212) dated 13th June 1949.

8. It is then urged that the retrenchment took place at a time when there was no ordinance in existence, that the dispute could have been referred to a Tribunal by the Provincial Government, that the Central Government had no right to order adjudication of disputes previous to the date of the ordinance. The provisions of the Industrial Disputes Act with regard to the ordering of reference of the disputes are procedural in character and the law governing a reference would accordingly be the law prevailing at the date of the reference. There is no vested right in procedure—See 1954-I.L.L.J.-p/127 at p. 133 and 134, where after detailed discussion of the question it was held that when an existing mode of procedure in a court of law can be altered by the legislature, it has also the power to alter the mode of procedure in an arbitral Tribunal. The Government were quite competent to alter this law of reference by an appropriate Government and the law prevailing at the time of the reference would be the law applicable. The Ordinance was in existence at the time of institution of the Sen Tribunal and a corresponding act was in existence at the time of the present reference. The Central Government was accordingly competent to make this reference which related to a banking company.

9. It was urged that a good deal of time had lapsed between the date of the retrenchment and the date of reference to Sen Tribunal as well as the date of reference to the present Tribunal and that the dispute even if it arose at the time of the retrenchment should be taken to have lapsed by reasons of expiry of time. In 1954-I.L.L.J.-p/327 at p. 331, it was pointed out by the Labour Appellate Tribunal that there is nothing in the Industrial Disputes Act to show that the claim for reinstatement, if otherwise justified, can be defeated simply on the ground of delay, because no time limit is prescribed in the Act for the making of the reference or the granting of the relief. It is for the appropriate Government to consider, if after long lapse of time, a reference should or should not be made. But once a reference has been made the Tribunal is bound to give adequate relief justified on the record. As in the case quoted above, so in the case on hand the delay was due to the circumstances beyond the control of the workman concerned. The Hon'ble Tribunal did, no doubt, say that the question of delay may only affect the nature of relief or the quantum of compensation, for example, the Company might say that

by reasons of long delay the job has been filled up. Thus the dispute which arose by the retrenchment was continuing to exist all along and the reference was competent and this Tribunal has no right to find fault with the Government with regard to the making of the reference.

10. It was forcibly contended that the workman retrenched was not retrenched in a dispute and that as soon as he was discharged he ceased to be a workman, that when he ceased to be a workman a dispute regarding him could not be industrial dispute. This point was considered by the Allahabad High Court in the case—*M/s. Ganesh Das Ram Gopal Vs. State of Uttar Pradesh and others*, 1953-I.L.L.J.-p/1. The Judges in that case placed reliance on the case of *Western India Automobile Association, Bombay Vs. The Industrial Tribunal* (1949-LLJ-p/245) and laid particular stress on the following remark in para. 11 of that judgment of the Federal Court.

"It will be a curious result if the view be taken that though a person discharged during a dispute is within the definition of the word, 'workman' yet if he raises a dispute about his dismissal and re-instatement it would be outside the words of the definition 'in connection with employment or non-employment.' They also referred to the case of the *Indian Paper Pulp Co Ltd Vs. the Indian Paper Pulp Workers Union*, A.I.R. 1949, F.C. 148 and held that those two cases of the federal Court, leave no room for doubt that a dismissed employee falls within the definition of a workman and a dispute raised by him in connection with his non-employment does fall within the purview of the term of Industrial dispute. Further due notice was taken of the remark of Mitter J. in the case *J. Choudhry Vs. M. C. Banerji*, 1951.II F.J.R. 218 that an individual dispute would arise after the dismissal and that the person dismissed would not be a workman at the time of the dispute and that argument was rejected by the Allahabad High Court by preferring the principle laid down by the Federal Court to the dictum of a single Judge of the Calcutta High Court, namely, Mitter J.

10-A. There is, no doubt, that the quotation from the *Western India Automobile* judgment of the Federal Court does not directly cover the matter in controversy at present. It is at best an *obiter dictum*. But this *obiter dictum* was given very great weight by Labour Appellate Tribunal in 1953-I.L.L.J.p/757 *Swedish Cotton Mills Co. Ltd. Vs. their respective workmen*—see para. 4 towards the end. The Full Bench in that case has decided that "when a dispute is raised by a workman personally and individually, which is connected with his employment or non-employment or his terms of employment or conditions of labour, it is an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act. This necessarily means that a workman dismissed can raise a dispute about his dismissal which may not have occurred pending a dispute and that a Union or other workmen are not needed to intervene in order to bring it within the definition of an industrial dispute."

11. I am also aware of the latest reported case decided by the Patna High Court—*New Insurance Co. Ltd. Vs. Central Government Industrial Tribunal*, 1954-II.L.L.J. p/21. It does run counter to 1953-I-LLJ. p. 757. I can only take notice of it but I am duty bound to follow the ruling of the Labour Appellate Tribunal and must leave the question to be canvassed at higher level by the bank. I will, therefore, hold that the dispute raised by the worker even after retrenchment is an industrial dispute and he can raise it personally.

12. *Issue No. 2.*—With regard to the necessity or *bona fides* of the retrenchment there is the affidavit of the Chief Accountant, Mr. R. B. Shah, dated 10th February, 1954. He has sworn that as one of the principal officers of the bank he took part in the conference where the question of surplus staff was taken up. He explains that a large number of subordinate staff was kept on the books of the Calcutta office for the purpose of training, to enable them to get acquainted with the routine of the bank, because they were contemplating the opening of a few more local offices where these men under training could be utilised.

13. The Reserve Bank of India, however, in December, 1948, rejected the application of the bank for permission to open more local branches. This made it necessary to get rid of the surplus staff. The subordinate staff was 183 while the clerical and supervisory staff was only 499, that this proportion was very high in the case of subordinate staff and for the purpose of reducing unnecessary expense retrenchment of a number of the subordinate workers had to be ordered in the normal course of business. that there were no extraneous circumstances whatsoever in that regard.

14. There is, no doubt, that Mr. J. N. Mehrotra, who represented the workman, was rather hesitational in regard to ulterior motive for the retrenchment. He, however, complained that the management had not done justice to the workman, that there was no genuine trade reasons for the retrenchment, because new recruitment was admitted by the bank to have been made even after the retrenchment. I will at once say that there was no victimisation, no ulterior motive at all proved in the case; that the retrenchment was occasioned by the refusal of the Reserve Bank to permit the opening of new branches in Calcutta. My attention was drawn to the statement of claim made before Sen Tribunal by this worker. It does not at all attribute any ulterior motive. All that it says is that the worker was retrenched without any rhyme or reason, that he was not informed of any reason whatsoever. The notice issued by the Manager in this case stated, "owing to the reduction of establishment your services will not be required from 28th February, 1949—See Annexure I to the written statement of the bank. I have, therefore, no hesitation in finding that the retrenchment was for good trade reasons and in good faith.

15. *Issue No 3*—The bank contends that extra staff had been entertained at the Calcutta main branch in preparation for the opening of the new branches which had been applied for and which were not sanctioned by the Reserve Bank, that for that reason Calcutta main branch was legitimately made the unit for choosing the workers to be retrenched. The workmen's representative forcefully urges that the whole bank staff whether at Calcutta or elsewhere should have been made into one seniority pool and the most junior man of this whole pool should have been retrenched. I have very carefully considered the situation, especially in view of the statement of the bank in the sister case of Shri Shiv Dhani Ram, that if all the Calcutta branches were made into one seniority pool Shiv Dhani Ram would not be one of the retrenched workers. I have also before me the circumstance that neither Bishwa Nath Prasad nor Shiv Dhani Ram was a permanent worker. They had yet to be confirmed as their service books show, but that might be the case with other juniors also who were working at other branches at Calcutta city and who were not disturbed. It is further in evidence that transfer from one branch to another in Calcutta and in fact, even outside Calcutta was possible. I see no justification for allowing juniors to remain undisturbed, simply because they happened to be working not at the main branch but in the other branches of Calcutta city. The other principles governing retrenchment adopted by the bank are quite unexceptionable.

16. I will, therefore, hold that Bishwa Nath Prasad was not rightly chosen for retrenchment. There is nothing on the file to show that when these claimants were taken they were particularly told that they were being appointed against only the expectation of new branches being permitted by the Reserve Bank. Calcutta city should at least form a unit for determining juniority for retrenchment. This is the only error into which the bank has fallen.

17. *Issue Nos. 4 and 5*.—As regards reinstatement, the bank only says, "as it is not practicable for the bank to re-employ its retrenched employees, the question of offering him re-employment does not arise." This is really no argument at all. The bank is an expanding institution and it is admitted that several people were employed after the retrenchment. I will, therefore, order that Bishwa Nath Prasad be re-instated within one month of the publication of this award. The delay in the disposal of the dispute covers a period of about five years but neither of the parties is responsible for it. The workman is of the subordinate category which can even live upon manual labour. The delay can justify a lenient view in the matter of fixing compensation. I allow the workmen two months' basic pay and dearness allowance, which means Rs. 100 and this in addition to what he has already got as pay in lieu of notice. This amount shall be paid within two months of the date of the publication of the award.

18. *Issue No. 6*.—The Bank urges that the man accepted unconditionally the notice of discharge and the salary and allowances paid to him in lieu of notice without any protest when he was fully aware that he was being discharged by way of retrenchment and that by that acceptance he stood estopped from contesting the retrenchment and from claiming any compensation and must be taken to have waived all those rights. The question of the effect of acceptance of the wages in lieu of notice came up for consideration before the Labour Appellate Tribunal in several cases, e.g. Kanpur Omai Bus Service case. (1951-II.L.J.p/483). Vishwa Miter Press case (1952-II.L.J.181) and in the case of Taradutt and others (1952.LAC-92). In the last case the Tribunal definitely held that in view of the unequal position

of an employer and needy workman, mere acceptance of wages in lieu of notice without more should not be given the normal effect it could have in law. It must be proved that the acceptance was voluntary and made with full knowledge of its consequences upon the dispute. In the case on hand, we have mere acceptance of wages in lieu of notice without more and no other evidence to show that the man was giving up his right of disputing the discharge. A man has no choice in the matter of receiving the money he is being paid and he does not lose his other legal rights resulting to him from the retrenchment unless he does something to make the employer believe that he was giving up his rights to reinstatement. A similar view was taken by the High Court of Calcutta in the case of *Bilas Chander Mitter Vs. Balmer Lawrie & Co.* 1953 (I) LLJ—p. 337, and it was held that unless waiver is clearly established or can be inferred from the facts proved the plaintiff's rights cannot be taken away by mere implication. In the absence of any evidence to show that the workman was in any way leading the employer to think that he was accepting his retrenchment finally and giving up all his rights to reinstatement, I am unable to apply the doctrine of estoppel or waiver to him.

19. It has been urged that he should be given all the privileges of seniority and adjustment of pay and allowances but I am finding fault only with the constitution of the seniority pool and have no reliable account of the earnings of the workman during his unemployment period and also remember that the workman was a mere bearer in the subordinate service who could easily find gainful employment by manual work. In view of the additional compensation which I have granted to him, I would only give him the basic salary and dearness allowance which he would have got on the date of his reinstatement if he had never been retrenched. No further adjustment of other benefits is granted to him.

20. The evidence in this case and the case of *Shri Shiv Dhani Ram*, Serial No. 2 have rested on the same evidence and so this order shall be read as a part of the order in that case, which will be now taken up.

Serial No. 2—

Shri Shew Dhani Ram.

Vs.

United Commercial Bank, regarding discharge from service.

The case of *Shri Shew Dhani Ram* also arises out of the retrenchment occasioned by the refusal of the Reserve Bank of India to permit the opening of new branches in Calcutta city by the United Commercial Bank. The representative of this workman, in addition to the allegations made by *Bishwa Nath Prasad*, stated in the claim petition that the bank had discharged him for reasons other than those given namely, reduction in staff. When examined in court the said representative touched up the case by saying that the bank had grudge against him for being a leading and active member of the group of bearers that were retrenched and that he was a straight fighter. The bank definitely countered that statement and challenged the right of representative to appear for him. The other pleas in this case were the same as in the case of *Bishwa Nath Prasad*.

2. The issues in this case were those that we have discussed in the case of *Bishwa Nath Prasad* and there were only two additional issues:

Can Mr. J. N. Mehrotra represent the claimant in these proceedings and whether the retrenchment was on extraneous considerations or for improper motives and whether the claimant was to be taken to have waived his claim against the bank by accepting notice pay and by asking for service certificate.

3. Mr. J. N. Mehrotra, President of the U.P. Bank Employees Association, Shah-jahanpur Unit, produced a few letters indicating prescribed authority from the workers, see P 1 to P 4, P 4 being the formal authority quite valid in law.

4. As regards extraneous considerations, there is absolutely no evidence on the file and it is very important to note that no such extraneous circumstance was even alleged in the statement of claim before Sen Tribunal. Para. 2 of that statement of claim reads as follows:—

"That with regard to the nature of the dispute I beg to say that *all of a sudden, without any conflict*, the notice of the termination of my service was served, so I am not in a position to extend the real cause of the dismissal before your honour".

5. The allegation of ulterior motive now raised on behalf of the workmen by his representative is clearly an after thought. For reasons already given in the foregoing case, of Bishwa Nath Prasad the retrenchment was for reasons of economy and because the Reserve Bank refused to permit the bank to open new branches in Calcutta city.

6. As regards the plea of waiver, the acceptance of notice pay cannot possibly amount to voluntary admission by the workman of the validity of his discharge. He has no help in the matter at once and he has to take what is offered. He does not thereby say that he is not going to raise a dispute over the discharge. He applied on the 16th December, 1952 that he should be issued a certificate of his previous employment for securing a job elsewhere. Such an application cannot mean that he gives up his case for re-instatement, if one is open to him at law. One has to remember that he had lost his case in Sen Tribunal and would be anxious to seek a job elsewhere, he cannot be blamed for utilising his previous services with this bank for getting a testimonial from the bank about himself. This does not at all amount to a waiver of his claim for re-instatement in this bank.

6-A. I want to emphasise that there is a definite declaration, Ex. D.6/A by the bank that Shew Dhani Ram would not have been retrenched if all the offices of the bank in the city of Calcutta were formed into one seniority pool.

7. I would order that Shew Dhani Ram be re-instated in his job within one month of publication of this order. He would have Rs. 90 as compensation i.e., two months pay in addition to what he has already got. His pay at the time of his reinstatement shall be that to which he would now have been entitled in view of his seniority as at the date of his retrenchment. No other adjustments for the period of unemployment are necessary.

Serial Nos. 3 and 4—

Shri Prampati Singh and Shri Lachman.

Vs.

United Commercial Bank, Reg. Discharge from service.

Shri J. N. Mehrotra, workmen's representative, has stated that he has been instructed by the United Commercial Bank Employees' Association that no claim has to be put in for these two claimants. Their claim must be taken to have ended. No further orders are accordingly necessary in these two cases.

Serial No. 5—

Shri B. L. Gupta

Vs.

Hindustan Commercial Bank, Calcutta, Reg. Dismissal from service

This dispute has ended in a compromise as follows:—

"The dispute before this Tribunal as laid by Mr. B. L. Gupta is hereby finally settled between the parties by payment of a sum of Rs. 250 (Rupees two hundred and fifty) only to Mr. B. L. Gupta. A Pay Order is now presented to the Tribunal for forwarding to Mr. B. L. Gupta in full and final settlement of all his claims in this dispute."

(Sd.) J. N. MEHROTRA,

for Mr. B. L. Gupta, President, U.P. Bank

Employees Union,

(Shahjahanpur Unit)

(Sd.) JAGDISH NARAIN, Agent,

Hindustan Commercial Bank Ltd.

Delhi.

This compromise was duly admitted before the Court and the Pay Order was duly sent to Mr. B. L. Gupta by registered post, acknowledgment due and the acknowledgment has been duly received. No further orders in the case are necessary as the claim stands fully satisfied.

Serial No. 6--

Shri K. B. L. Saxena.

Vs.

Calcutta National Bank. Reg. Dismissal from service.

The dispute was over dismissal from service. The bank in the first instance did not care to put in any appearance and when it was sent a special letter to put in its reply to the statement of claim it intimated that the Calcutta National Bank Ltd. had been wound up by an Order of The Calcutta High Court dated 2nd December, 1952 that under section 171 of Indian Companies Act, "no suit or other legal proceedings shall be proceeded with or commenced against the Company except by leave of the Court, i.e., Hon'ble High Court at Calcutta."

Mr. J. N. Mehrotra who represented the claimant joined issue on the point. He argued that Section 171 was not applicable to the case and he placed reliance on a decision of the High Court of Bombay in R. B. Shah Vs. V. R. Sawarkar and others, reported as 1952-I.L.L.J-p/784.

Section 171 of the Indian Companies Act reads as follows:—

171. *Suits stayed on winding up Order.*

"When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose"

The only point that we have to decide is whether the proceedings under the Industrial Disputes Act are legal proceedings. As advised at present, I have reasons to hold that they are legal proceedings because they are taken under a law i.e., the Industrial Disputes Act of 1947 and the rules thereunder. I am not forgetful of the fact that that law prescribes a procedure which is not in strict accordance with the Civil Procedure Code. But Civil Procedure Code is not the only basis for giving a certain proceeding the character of legal proceedings. The word, "legal" is wide enough to cover proceedings under any law.

In the Bombay case relied on by the workers' representative section 171 did not come into view because the applicant was not the Company which was under liquidation but a person who was the director of the company and the Manager thereof as well. The claim was for payment of wages and that debt the applicant wanted to be proved in liquidation instead of being ordered to be paid by himself. The Payment of Wages Act, section 3 laid down that responsibility for payment of wages lies upon the employer, and the employer under the Factories Act is a person named as the Manager of the factory. The applicant was named as such Manager. For that reason, the High Court held that it is the Manager and not the Company which has been made responsible under the Act for payment of wages and that the applicant had failed to pay the wages to which the opponents were entitled, that those opponents could obtain an order against him. Thus the decision proceeded on the express ground that the applicant was in his own capacity as Manager responsible for the payment of wages. The decision does not in any way lay down that the company under liquidation could be proceeded against for such a debt. The effect of section 171 was accordingly not under consideration in that case.

In the present case, it is the company that is being proceeded against and as it is under liquidation, section 171 would come into operation.

Shri J. N. Mehrotra was given on 26th February, 1954 sufficient time to obtain the leave of the High Court Calcutta but up till now no such leave has been obtained. On another ground as well this Industrial dispute cannot be proceeded with, that is, the opposite party having closed its business. In the Award of the U.P. Conciliation Board (Banks) Mr. Justice Bindhasni Prasad in para. 14 under issue No. 12-Banks in liquidation or under moratorium remarked—

"In the order appointing this Board, the Government mentioned all these banks which were party to the proceedings before Shri B. B. Singh, although some of them have gone into liquidation, or such banks as have gone into liquidation have ceased to exist in the eyes of law. To them neither the Award of Shri B. B. Singh nor the recommendations contained in this report, if they are accepted by the Government, can be applicable. They are dead juristic persons. Of course, the employees of such liquidated banks

are entitled to the arrears of their salary and allowances according to Shri B. B. Singh's Award and they can make their claim before the liquidators, according to law. They have a priority in the settlement of their claims before the liquidators."

With this view I am in respectful agreement. There is still another aspect of the matter. The object of the Industrial Disputes Act is to promote measures for securing and preserving amity and good relations between the employer and workmen. It has also been held by the High Court of Madras in the case of Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and others reported as 1952-ILLJ.p/364, "that although the term industrial dispute has been very widely defined in section 2(k) of the Act but it appears to be clear to us that the definition of an industrial dispute and the Act taken as a whole assume the continued existence of an industry". When an industrial concern comes to an end the harmony between the workers and the employers is no longer the concern of the State, so as to invoke the special provisions of the Industrial Disputes Act, because there can be no fear of a strike in such cases. In any view of the matter this Tribunal is not competent to deal with the dispute. No relief is, therefore, possible.

The above will dispose of the cases of No. 7—Shri Raghuraj Singh Vs. Central Calcutta Bank, No. 21—Shri Sukhdish Narain Vs. Calcutta National Bank and No. 26—Shri C. P. Misra Vs. Calcutta National Bank.

Serial No. 7—

Shri Raghuraj Singh.

Vs.

Central Calcutta Bank, Reg. Transfer from U.P. to Bihar

Already dealt with under Serial No. 6 above.

Serial No. 8—

Shri Lachman Swarup.

Vs.

Hindustan Commercial Bank, Reg. Victimisation.

This person seems to be the same person as No. 24. Enquiry was made from the Labour Ministry about this person's description but they had no further information about him. Most probably he is the person at No. 24.

Serial No. 9—

Shri Kallash Chand Bajpai.

Vs.

Hindustan Commercial Bank, Reg. Victimisation.

He was duly served. Mr. J. N. Mehrotra on the 19th January, 1954 stated that the above mentioned worker had promised to give him instructions and that he did not turn up before him. He has been duly served and he has not cared to put in any claim. No relief can be granted to him accordingly.

Serial No. 10—

Shri Bhola Ram.

Vs.

Hindustan Commercial Bank, Reg. Termination of employment.

The dispute was over termination of service. The bank pleaded that he had been appointed as Sentry, Allahabad branch on 16th April, 1948 and terminated on 7th January 1949 by payment of one month's basic pay in lieu of notice, because retrenchment of surplus staff had been necessitated on economic grounds. It was added that he was terminated with the permission of the Labour Commissioner, U. P.

Bhola Ram was examined and he frankly and very truthfully admitted that there was no hostility with him on the part of any bank officer, that other workmen had also been retrenched alongwith him and that even the branch itself was closed after a year. He also admitted that he was the junior most man at the time of his retrenchment.

Thus the *bonafides* of the retrenchment and compliance with the rule of 'Last come first go' stand admitted. He had only one year's service and so one month's total emoluments would be adequate relief especially, when we know that the Hindustan Commercial Bank has been on the down grade for a long time. From the records, however, it appears that he was paid only basic salary and the dearness allowance of Rs. 16/- was not paid with the notice period pay. I would, therefore, order that the bank do pay him D.A. Rs. 16/ and costs Rs. 16/ as this

truthful man had to travel from Allahabad to Delhi and back for the pursuit of this case and then acted with creditable honesty in preferring his claim before the Court.

The Bank will pay him the amount by Money Order at his address given in the reference Order within six weeks of the date of the publication of this award.

The bank shall give him decided preference in regard to any vacancy of subordinate staff of peon or Senty when any vacancy after the date of the publication of the award does occur.

Serial Nos.

11. Shri G. G. Tandon, Cashier, Meerut Cash Office or Token Office.
12. Shri H. P. Seth, Cashier, Gulaothi, Pay Office.
13. Shri B. N. Tandon, Cashier, Khatauli, Pay Office.
14. Shri R. C. Lal, Cashier, Kunch, Pay Office.
15. Shri Hari Mohan Tewari, Cashier, Gorakhpur Token Office.
16. Shri Munnalal Tandon, Cashier, Orai, Pay Office.
17. Shri P. L. Tewari, Cashier, Siswa Bazar, Pay Office.
18. Shri Kailash Nath Tandon, Cashier, Bindki, Pay Office.
19. Shri Shyam Nath Mehrotra, Cashier, Shahjahanpur, Pay Office.
20. Shri Brij Kishore, Cashier, Dibai, Pay Office.

Versus

Allahabad Bank Limited., Reg. Payment as for Head clerks, Supervisors & Departmental Incharges.

The claimants allege that as cashiers of Pay offices in the places shown against them, they are performing duties as important and even more important than the Head Cashiers of a Branch of the Allahabad Bank Limited, that the said Bank has given the Head Cashiers the grade of Rs. 120—8—200—10—300 laid down for Departmental Incharges by Shri B. B. Singh in his U. P. Banks Award to be found on page 66, paragraph 12 of the Compilation called the Award of the Conciliation Board (U. P. Banks) (to be hereinafter briefly referred to as U. P. Government Compilation) but did not grant that grade to them, that it only gave them the grade of Rs. 75—5—120—EB—8—200, and that they (the claimants) should be granted payment according to the grade laid down for Head Clerks, Supervisors and Departmental Incharges.

They place themselves on a *parity* not only with the Head Cashiers, as mentioned above, but also with Head Clerks and Supervisors on the ground that in the Pay Offices they are doing counter-signature work which alone had been the reason for giving a grade of Rs. 120—8—200—10—300 to Head Clerks and Supervisors.

The Bank Management stoutly deny that these claimants had any similarity of work and responsibility with the Head Cashiers and plead that they gave the higher grade to the Head Cashiers simply because of their higher position and responsibility, that the counter-signature work done by the claimants in the small offices known as Pay Offices and Cash Offices stood no comparison with the counter-signature work done by Head Clerks and Supervisors who were generally men of greater educational and banking attainments. It was also pleaded that the reference itself was bad in law and that previous decisions on the same question by different Tribunals against the claimants barred the present claim on the principles of *res judicata*.

The following issues were framed on the pleadings of the parties which will be described in full detail when each issue is taken up:

- (1) Are the Cashiers in charge of Pay Offices, Token Offices and City Offices entitled to the same wages, salary and allowances as the Head Cashiers of Branch Offices, viz. Rs. 120—8—200—10—300 and are the duties of these workmen as onerous and responsible as the duties of Head Cashiers of Branch Offices?
- (2) If so, from what date should these wages have effect, whether from 1st January 1947 or some later date?
- (3) If retrospective effect is given, what adjustments would the claimants be entitled to in regard to previous bonus payment, provident fund contribution, dearness allowance and T. A. Bills?

- (4) Is B. B. Singh Award to be treated as not enforceable for the purpose of these claims which relate to back years?
- (5) What will be the effect of Mr. Justice Bindbasni Prasad's Award or Shastri Award on B. B. Singh's Award?

I must first take up the legal issues i.e. 4 and 5 as to the invalidity of the reference, for, if the reference be bad I will have no jurisdiction in the case.

Issue 4.—The Bank's case is that B. B. Singh's award is no longer in force on the grounds (i) that the said Award was an Award under a reference made by the U. P. Government, a Provincial Government, (ii) that from 30th April, 1949, by reason of the Ordinance VI of 1949, Allahabad Bank became a Banking Company within the meaning of Section 2(a) (bb) of the Industrial Disputes Act, and (iii) that from that date only an Award made under a reference by the Central Government could determine the disputes with regard to this Bank. I will at once say that this argument does not take proper notice of the provisions of the Ordinance VI of 1949. B. B. Singh's Award is dated 11th March, 1947, and was enforced by the U. P. Government's Order No 1990 (L)/XVIII-435(L)-46, dated the 15th March, 1947, (appearing on page 62 of the U. P. Government compilation) Paragraph 3 of that Order directs "that the said Award shall remain in force and shall in respect of the matters, covered by the Award, bind the said employers and their employees for a period of six months from the date of this Order in the first place; and shall then remain in force for such further period as may under powers vesting in the Governor be prescribed, unless..... (the portions omitted are irrelevant to the present discussion). Then by Notification No. 2365(St)/XVIII-51(st)-47, dated the 13th September, 1947, (appearing on page 78 of the same compilation), the said Award was directed to continue in force till further orders. The words 'till further orders' have to be specially taken notice of because there are no further orders by the U. P. Government taking away the effect of B. B. Singh's Award. The result then is that B. B. Singh's Award held good in any case till the 30th of April, 1949, the date of the Ordinance VI of 1949 which brought a banking company within the jurisdiction of the Central Government for purposes of settlement of industrial disputes.

We will now see what affect the Ordinance of April 1949 had upon B. B. Singh's Award. The Ordinance does not by itself take away the effect of previous Awards made under references ordered by a Provincial Government. It only makes provision for their being ordered to cease to be in operation under certain circumstances. For the purpose of the present dispute, Section 6 of that Ordinance is very important and must be quoted *in extenso*

"6. POWERS OF CENTRAL GOVERNMENT TO REFER DISPUTES IN "RESPECT OF WHICH AWARDS OR DECISIONS HAVE BEEN MADE FOR RE-ADJUDICATION.—(1) Where any award or decision has been made in respect "of any industrial dispute concerning any Banking or Insurance Company by any "Tribunal or other authority constituted or appointed by a Provincial Govern- "ment, or any officer or authority subordinate to such Government, then the Cen- "tral Government may, notwithstanding that the said award or decision is in "force, by order in writing refer under section 10 of the said Act the dispute or "any of the matters in dispute to an Industrial Tribunal constituted under the "said Act for readjudication and stay the implementation of the award or decision "so made or of any part of such award or decision until the Industrial Tribunal, "to which the dispute or any of the matters in dispute is referred for adjudica- "tion, has submitted its award or for such further period as the Central Govern- "ment may consider necessary.

"(2) After the Industrial Tribunal to which the dispute or any of the matters "in dispute has been so referred for re-adjudication has submitted its award under "sub-section (1) of Section 15 of the said Act, the Central Government may, by "order in writing, declare that the award or decision previously made in respect "of such dispute by the Tribunal or other authority constituted or appointed by "the Provincial Government or any officer or authority subordinate to such Gov- "ernment or such part of that award or decision as may be specified in the order "shall cease to be in operation."

[This Ordinance was replaced by an Act of the Central Government (Act No. LIV of 1949) and the wording of Section 6 of the Act is exactly the same as in the Ordinance.]

B. B. Singh's Award and the Award of the Conciliation Board, U. P., clarifying B. B. Singh's Award, have not so far been ordered by the Central Government to cease to operate although the Central Government did refer some of the disputes, which arose from the implementation of B. B. Singh's Award to Sen Tribunal and Shastri Tribunal. The Award of Sen Tribunal was declared null and void. The

Award of Shastri Tribunal still remains *sub-judice* in so far as the Appellate Award relating to Shastri Tribunal Award has not been so far accepted by the Government. As a matter of legal requirement, there should be a declaration in writing by the Central Government that the previous award of Shri B. B. Singh or the Conciliation Board U. P. shall cease to be in operation, before B. B. Singh award would cease to operate. No such declaration has been produced before this Tribunal. I am, therefore, quite clear that B. B. Singh's Award and the U. P. Conciliation Board's Award still hold the field.

The plea of *res judicata* based on the previous decision of the Sen Tribunal fails for the simple reason that that Award was declared to be null and void and has no legal existence for this purpose. As regards the award of the Shastri Tribunal the matter has not still reached finality for reasons already given. The plea of *res judicata* cannot be based on B. B. Singh Award and the Conciliation Board Award, the argument that in the presence of a decision already made by B. B. Singh's Award and by the Conciliation Board Award, the Central Government had no business to make a reference of this dispute which stood decided by those awards, loses all force in the face of the wording of Section 6 of Ordinance VI of 1949 and the Corresponding Act which expressly authorises the Central Government to order re-adjudication of the dispute already decided by an award made under a reference of the Provincial Government.

The result is that B. B. Singh's award is still in force and the claimants can ask this Tribunal to enforce that award by ordering implementation of it. What that implementation is to be, will be a question depending on certain other facts which will have to be considered under other issues.

This disposes of issue No. 4.

Issue No. 5.—Effect of Conciliation Board U.P. Award & Shastri award.

This issue also stands disposed of by what is said in the above discussion. B. B. Singh's Award remains in force and so does the Award of the Conciliation Board U. P. presided over by the Hon'ble Mr. Justice Bindhasni Prasad. The Conciliation Board's Award will be taken to supplement B. B. Singh's Award in so far as it clarifies that latter award. The U. P. Government while enforcing the Conciliation Board's award by Notification No. 1912(st)/XVIII-142(st)-48, dated the 18th April, 1949 (appearing as the first document in the U. P. Government compilation) expressly ordered "The said award relating to the clarification of B. B. Singh's Award is hereby enforced." It is necessary to point out that the reference to the Conciliation Board covered not only clarification of B. B. Singh's award but also revision of that Award. It also covered another important matter which will be clear from paragraph 1, sub-para. (ii), which reads as follows:—

"Any of the banks concerned or any union of their employees may within three weeks from the date of this Order apply to the Board in writing to decide any individual case of an employee or any dispute or clarify any point which has arisen or is likely to arise in connection with the provisions of Government Order No. 1990(L)/XVIII-435(L)-1946, dated March 15, 1947 and subsequent orders in the matter, or their implementation. The Board may also of its own motion or under directions from Government, include in its proceedings any matter arising out of the provisions of, or involving a question affecting implementation of the said Government Order."

The Award, as submitted to U. P. Government by the Conciliation Board U. P. was not accepted in its entirety by the State Government. Portions of the award relating to clarification of B. B. Singh's Award and to the decision of the individual cases of employees with regard to the implementation of B. B. Singh's Award or of the orders of the Government were accepted. The portions relating to the revision of that Award were not accepted by the Government. The case of the present claimants was decided by the Conciliation Board and it was held that in view of the findings on issue No. 26, they were not entitled to the grade of Departmental Incharge and their claims to that effect should be dismissed. It was added "They are, however, entitled to the allowance recommended in my report and they can put in their claims before the Bank and if it is not allowed then they can apply to the Labour Commissioner." The Bank urges that in the face of this decision by the Conciliation Board no further clarification of B. B. Singh's Award by this Tribunal is legally possible. I will again emphasize that the Award of the conciliation Board can be called into question by the Central Government and the matter sent up for readjudication. The decision of the Conciliation Board can be utilised by the parties for basing their arguments upon it but the readjudication of the same matter can still be ordered by the Central Government which has made the present reference to this Tribunal. When readjudication can be ordered it can be made. The Central Government has to consider both the

adjudications and decide if the old adjudication is to cease to operate. It is exactly on considerations of expediency and social justice that finality does not attach to Industrial Tribunals awards. Of course, the previous award has to be taken fully into consideration by the subsequent adjudicator and a conflicting award passed by it only for good reasons advanced before it and accepted by it.

Issue 1.—The issue that we have to decide is whether the cashiers incharge of pay offices, token offices and city offices are entitled to the same wages, salaries and allowances as the Head Cashiers of Branch offices, namely Rs. 125—8—200—10—300 and whether the duties of these workers are as onerous and responsible as the duties of the Head Cashiers of branch offices. This issue really covers two issues No. 26 and 27 which were before the U. P. Conciliation Board, namely:—

“*Issue No. 26.*—Whether the Head Cashiers or Treasurers representatives or any employee in the banks who perform the function of Head Cashiers are to be treated as Departmental incharges of the Cash Department in the banks? [It went to Sen Tribunal as issue 23 and to Shastri Tribunal as issue 25.]

(27) Whether the following designations existing in various banks fall in the category of Head Clerks, Supervisors and Departmental Incharges, namely, Junior Assistants, Senior Assistants, *Cashier Incharges at Pay Offices*, Senior Clerks, C. Class Power Holders, Power of Attorney Holders, Countersigning Clerks Incharges of Pay Offices, Sub-Accountants and Assistant Accountants?”

Issue No. 26 arose because no bank other than the Allahabad bank gave the pay of Departmental incharges to their Head Cashiers and the Head Cashiers of those other banks claimed that pay. Issue No. 27 arose, because the Cashiers incharges of pay offices and token offices claimed parity with the Head cashier. We must, therefore, first find whether Head cashiers are to be treated as Departmental Incharges and then whether these pay offices cashiers are to be placed on equality with the Head cashiers. If the Head cashier cannot be treated as a Departmental Incharge these Cashiers incharge of pay offices would have no case for the higher salary of Departmental in charge.

The present claimants have now claimed parity not only with the Head cashiers but with the Supervisors and Head-clerks on the ground that they do counter-signature work which is done by supervisors and Head-clerks in the branches. This shifting of ground has to be carefully taken notice of, for, the original position taken by them before the U. P. Conciliation Board, which is described on page 43, para. 79 of the Compilation in the following:

“These employees claim higher rate of Departmental Incharge on the ground that their respective Pay Offices they are Incharge of the Cash Department.”

We have to remember that these applications were originally made to the Labour Officer, Uttar Pradesh and were intended to be applications for implementation of Shri B. B. Singh's award. We will have first to examine that award and see whether Shri B. B. Singh visualised these claimants as the equals of Head Cashiers, for, if he never did so the efforts of the claimants to stand on a level with the Head Cashiers will certainly fail. I have closely scanned that award and I find that he never visualised these Cashiers incharge of Pay Offices as the equals of the Head Cashier. In para. 27 on page 68 of the Compilation, we find him saying, in connection with direct appointments to the grade of staff officers etc. as below:

“The case of cashiers is on a different footing. It may not be possible to promote cashiers, who do a specialised job, to the supervisory officials' grade. Cashiers may, therefore, be promoted only to Head Cashier's post, although conceivably there may be exceptions to this general rule.....”

When the post of the Head Cashier is a post, promotion to which has to be looked for by these cashiers including cashiers incharge of Pay Offices or token offices, it is quite clear that they were visualised as at least one step below the Head Cashier. This would, as I have already said, make it impossible for those claimants to argue that they are departmental incharges like the Head Cashier and on a level with him for the purpose of claiming a certain grade of salary.

Another inference which we can legitimately draw from the above quotation is that cashiers were for the purpose of promotion viewed as a category generally

distinct from the category of clerks who could hope to rise to the post of Head-clerks and supervisors. Of course, there was, it appears, in the mind of Shri B. B. Singh no complete separation between these two classes of workers but it was only as a matter of exception to the general rule that the cashiers might have claimed to rise, to the supervisory official's grade. I would, therefore, hold that Shri B. B. Singh did not visualise these cashiers incharge of pay offices as entitled ordinarily to promotion as member of the clerical staff. In this view of things their claim that they should be treated as head clerks and supervisors by reason of their counter signing duties can not prevail.

The clerk incharge of a pay office has been held by Mr. Justice Bind Basni Prasad to fall in the category of supervisors or departmental incharges (see Page 21 bottom and 22 top of the Compilation). The reason given is that the clerk-in-charge of a pay office has to do a work which has to be distinguished from the duties of an officer as he functions under the direct control of a Branch Office or a Sub-Branch office and occupies a subordinate position. The Clerk-in-charge of pay office has not been given the position of an officer and is held to be a workman but he is the first man in the pay office and he checks the work of the cashier incharge. He checks cash everyday and the cashier must, therefore, be held subordinate to him on this principal ground. It can also be very easily claimed by the clerk incharge that he is to see to the working of the Cash Section to his satisfaction and to the satisfaction of the clientele. Having regard to the nature of his duties and responsibilities, we have no hesitation in arriving at the conclusion that he falls in the category of supervisors or departmental incharges as mentioned in Shri B. B. Singh's award.

It has also been urged that if that clerk incharge of the pay office who is the first man in the pay office is a departmental incharge the cashier incharge who must be held to be below him and under his control must not be given the same grade pay. This argument is certainly valid.

Another point that has to be carefully noted is that the Bank Employees Union itself made before Shri B. B. Singh the following demand for minimum salary and grade:

(a) Clerks, cashiers and Money Testers....Rs. 75—10—125—15—275.

(d) Departmental incharges, Head Clerks, Supervisors, Assistant Accountants and Officers Incharge at Pay Offices...Rs. 200—20—300—25—500.

It is certainly noteworthy that officers-incharge at Pay office were distinctly mentioned in clause (d) and no mention was made of the Cashiers-incharge of pay offices for the higher grade demanded therein by the Union. The omission of Cashiers incharge of pay offices by the Union itself shows that they were not being viewed as equals of officers incharge of pay offices.

The present claimants have claimed the grade of departmental incharges because their Bank gave that grade to the Head Cashier and that I have already held to be no valid reason because Shri B. B. Singh never visualised them as equals of the Head Cashier. We have also to remember that the Allahabad Bank was the solitary bank that gave the grade of departmental incharges to the Head Cashier and that no other bank gave that grade to their Head Cashiers, and that was the reason why issue No. 25 was placed before Shastri Tribunal in its present shape.

A careful examination of Shastri Award shows that the expression, 'departmental incharges' is not a technical one in banking practice and that it is not in vogue as such in the banks. That Tribunal accordingly took the expression as merely denoting a person who is incharge of any department of banking activity. The Tribunal noted that an affirmative answer to the question as propounded in Issue No. 25 did not lead to any definite conclusion unless it was correlated to definite rights and responsibilities or emoluments of a person incharge of a department, that there were several departments with varying activities, and the extent of responsibility of the head of a Department is not and cannot be uniform in all banks and in all matters. On this ground some of the Unions themselves realised the difficulty and simply demanded that head cashiers and treasurer's representatives should be treated as supervisors or heads of sections and should get emoluments appropriate to such positions and responsibility. This means that the expression 'departmental incharges' was considered as an unsuitable foundation for assigning to them (Head Cashiers) a certain grade of pay.

It is true that Shri B. B. Singh did not define or even describe what banking hands should be treated as departmental incharges, but it is wrong to say that he coined the word because the word is to be found in the reference order of the U. P. Government [See Schedule II item (ii) at p/60 of the Compilation]

Shastri Tribunal which had the power of fixation of new grades and scales of pay for all banking workmen all over India had no difficulty in leaving undecided Issue No. 25 and gave suitable allowances to these cashiers incharge of pay offices and other workmen of the Cash Department who claimed to be paid at the grade of departmental incharges. In so doing they must be taken to have decided that these persons were not departmental incharges because they gave a special higher allowance of Rs. 50/- to supervisors, superintendents, sub-accountants, departmental incharges, employees incharge of treasury pay office in 'A' class banks while they gave Head Cashiers (with units of 5 clerks and above) Rs. 20/- and Head cashiers (with units of 4 clerks and below) Rs. 15/- and cashiers incharge of cash in pay offices Rs. 15/-. Thus even the Head cashiers were not held to be Departmental Incharges. In the course of arguments before the Labour Appellate Tribunal against the Shastri Award no Union claimed equality for these cashiers incharge of pay offices with the head cashiers. In para 132 of the Labour Appellate Tribunal Award only higher allowance was claimed for them, namely, Rs. 25/- in place of Rs. 15/- but it is not clear what allowance was claimed for Head cashiers. What is noteworthy is that Shastri Tribunal gave the Head cashiers a higher allowance than was given to Cashiers incharge of pay offices, the words italicised are to be particularly noted, for, the present claim is to a higher salary. These were placed in the matter of allowances on a parity only with Head cashiers (Units of 4 clerks and below) and not with all Head cashiers, the words italicised are to be particularly noted, for, the present claim is to parity with the Head Cashiers for total emoluments—basic salary as well as Dearness allowance. Experience gained by longer period of service was never lost sight of by Shastri Tribunal.

I am also aware that Shastri Tribunal as well as Shri B. B. Singh were fixing minimum wages—see para 163 Shastri award, and paras 13 and 14 of B. B. Singh award on pages 66 bottom and 67 top of the compilation. The Allahabad Bank could not be found fault with if according to their own notions of the importance of the work of a Head Cashier they granted him a higher grade pay and they cannot be asked to grant that pay to any others whom they consider as lower in rank and responsibility.

The claimants have led evidence to show that the work which falls to their lot is heavier and more responsible than the work of the Head Cashiers. The logical outcome of such a proposition must be higher salary for them than was given to Head cashiers but they themselves do not go to that length.

The bank contends that the dispute as laid before the Labour Commissioner was for implementation of B. B. Singh Award and I must not travel beyond the expressed or implied findings of Shri B. B. Singh. The workers, on the other hand, stressed that the reference as framed at present must be looked at and that the language of the reference is wide enough to justify the dispute being decided even outside the four corners of B. B. Singh Award. The claim is 'Payment as for Headclerks, supervisors and Departmental Incharges' and there is no indication to the court to confine itself to the B. B. Singh award. As I have already pointed out that issue 26 of U. P. Conciliation Board covers this dispute and as that issue remained undecided on account of the U. P. Government not accepting relative portions of the U. P. Conciliation Board Award, the present reference made to the Tribunal may well be taken to cover that issue so far as the present particular cashiers incharge of pay offices are concerned. They can, therefore, demand that claim be settled on evidence as to the nature of their duties performed by them. In the statement of claim these workers made a great grievance of the fact that the Conciliation Board U. P. while making recommendation in their case never afforded them an opportunity to place their view point and evidence in support of their claims for the higher grades of Head clerks, supervisors and departmental incharges, that they were denied all the privileges of rules of natural justice by the said Board and they were not given any chance to prove the arbitrariness of the distinction made by the bank between the Head cashiers and cashiers incharge of the Cash departments of the City offices. Token offices and Pay offices. I have given them a full opportunity to produce relevant evidence on the subject. They have also stressed the remark of the said Conciliation Board itself, that in determining the character of a workman his designation or nomenclature was immaterial and that it was the duty performed by the employee which determines his status. They accordingly led a lot of evidence on the point of duties performed by the Head cashiers, Cashiers incharge of Pay office, Cashiers incharge of Token offices and City offices. They drew pointed attention of this Tribunal to the award of the Sen Tribunal with a view to establish that Sen Tribunal had treated and placed the Head cashiers and Cashiers incharge of Pay offices and Token office on equal footing and had prescribed for them equal special allowance because that Tribunal recognised that the duties of these workmen were of higher clerical cadre.

I will at once dispose of the argument derived from Sen award as altogether imaginary. That Tribunal did not place Head cashiers on equal footing with the Cashiers incharge of Pay offices. About the Head cashiers that Tribunal had a notion of special importance and it ranked them along with managers etc., as would appear from para 143, which says, "We would omit from our consideration such undoubted and high officers as Managers, Superintendents, Accountants, Head-Cashiers and Agents....." When prescribing special allowances the Tribunal omitted Head-Cashiers as such and fixed a minimum special allowance of Rs. 15/- for cashiers incharge of Cash in the Pay offices in the case of 'A' Class banks like the Allahabad Bank. An effort was made to take advantage of the use of the word, 'departmental incharges' mentioned in the last category of special allowances and it was argued that the Head cashiers were viewed as departmental incharges and given only special allowance. This effort too is altogether futile in view of the remarks in para 143 already referred to above. But, even if that contention were to be accepted the allowance for a Head-cashier in 'A' class bank would be Rs. 50/-, while it would be only Rs. 15/- in the case of Cashier-incharges in the Pay offices, and this would refute claim to equality now pressed by the claimants.

We have now to see how far the duties performed by the claimants involve equal work-load and responsibility.

We have three sorts of offices, (1) branches, (2) Pay offices and (3) Token offices or Cash offices or City offices. Shri Sham Nath Mehrotra, PW. 1 has described the distinction between a Token office and a Pay office. He has pointed out that at a Token Office cash transactions take place on vouchers but the vouchers are not entered in books there and then. They are taken at the end of the day to the branch office which maintains the books for their entry. The book writing is accordingly done at the branch and no books are maintained at the Token office. A Pay office, on the other hand, is doing the book writing as well in the case of its transactions. This is the main distinction between a Pay office and a Token office.

The claimants in their statement of claims put in a list of duties and their case was that duties 1 to 11 were common to the Head cashier and the Cashier Incharge of a Pay office, that counter signing duties 12 to 29 were done by the Cashier incharge of a Pay office but were not done by a Head cashier, because at the branch there were Head clerks and supervisors to do those duties 12 to 29. This witness, Shri Sham Nath Mehrotra while supporting that statement of claim, added that the cashiers incharge of a Token Office had not to do duties Nos. 5, 7 to 10 i.e. they did only duties 1 to 4 and 6. This would mean that the work at the Token office was of a limited nature. Sham Nath Mehrotra is supported by the Banks witness Shri Kishen Chand Kapur, Agent, Meerut branch, who, however, adds that the Meerut City office is a Token office and not a Pay office and is under the direct supervision of the branch office, that cheques of small amounts are cashed at the City office and that in the case of Pay offices the amount is unlimited, that the Head cashier of the branch has full control over the cashier of the Token office, that the Clerk incharge of the Token office can check the cash in hand of the cashier and give instructions about the cash transactions to the cashier. Reading the two witnesses together, one is left in no doubt that a City office or a Token office has essentially duties of a limited nature. I must mention here the statement made by Shri G. G. Tandon, who was for a long time the Cashier-incharge of the Meerut Token office and who is interested in establishing the importance of Token office as nothing less than that of a Pay office. He admitted that he had not to do duties 12 to 29 but while Sham Nath Mehrotra had stated that duties 5 and 7 to 10 were not done by the Token office cashier this witness stated that only duties 7, 9 and 10 were not done by him. The difference between the two witnesses is with regard to duty No. 5 and duty No. 8. Duty No. 5, is, to sign Daily Day Book for cash transactions; no Day Book is kept in the Token office and so that duty cannot fall on a Cashier in a Token office. Duty No. 8 is to sign the proposals of Hundi limits of the parties. In cross-examination this witness had to admit that the Hundi proposals were not signed by him. He, however, tried to bolster up his importance still by saying that he reported verbally or in writing as to the credit worthiness of a party. He was put a direct question as to whether the status of a Pay office was superior to the status of a Token office and he expressed his inability to say that adding, "they are of the same status, to my mind for Cash department business, the Token office of Meerut city has large attendance of customers, larger number of vouchers and larger number of cash handled than the branch office." After carefully considering the evidence, I have no hesitation in saying that the variety of Cash department work at the cash office is much less than that at the Pay office. I would emphasise the word, 'variety'. The quantity of work turned

out at the two classes of offices has not been established before me by any concrete evidence in the shape of statistics. The workmen as well as the management both made a statement that they did not want to place before the Court the comparative statement of the volume of work in a branch, in a Token Office and in Pay office. In the matter of job valuation, the volume of work is an important criterion and in the absence of that important data, it is not possible for me to determine the work-load of each class of office. It may be that the lesser variety of the work at the Token office is more than made up by the volume of work done by it as alleged by G. G. Tandon.

I would not make much of the fact that a Token office has no separate balance sheet or that its pay sheet is not paid at the Token office itself but at the Branch office. These are matters extraneous to the value of the job of the cashier. A City office may not be enjoying as much independence as a Pay office but the job of the cashier may still be very important.

I would also ignore the argument that a Token office is said to be raised to the status of a Pay office in banking terminology, for, that would again reflect upon the relative importance of the two offices and not on the relative importance of the job of the cashiers incharge of those.

Meerut Pay office was started in the year 1938 on the 1st May and it appears that it had the status of a Pay office in 1939 and then became a Token office soon after, because in the calendar of 1940 it is not mentioned among the Pay offices. No formal order altering the status of the Meerut Pay office to that of a Token office seems to have been made by the bank, at least no such order has been produced. The calendars printed by the bank after the year 1939 do not mention Meerut City as a Pay office. It is, however, very significant that Mr. G. G. Tandon, who was cashier incharge of the Meerut City office from the very date of its start, definitely stated that the duties done by him had been the same throughout. This leads me to the conclusion that originally the designation given to the City office was that of a Pay office and later on, the technical distinction between a Pay office and a Token office was accurately made and the City office was no longer called by the name of a Pay office. Mr. G. G. Tandon went so far as to say that the Meerut City office was a Pay office till the year 1953 but in his application Ex. PW. 14/1, dated 12th September 1949, while he was a Cashier incharge of this Meerut City office, described himself as 'a workman of the Token office' for the last 6 years. This clearly shows that Meerut City had been in accurate banking language, a Token office or a Cash office from the very start and not a Pay office.

In the absence of statistics of the volume of work, I have to search for some reliable yard-stick for determining the value of the two jobs. One such circumstance is luckily available. This bank even before B. B. Singh award used to give an allowance of Rs. 5/- per mensem to the Cashier incharge of a Token office as also to the Cashier incharge of a Pay office. This rough and ready method of assessment of the importance of a job by the employer himself must carry great weight with us. I would accordingly place these two categories on an equal footing.

Now we compare the work of a Head cashier with the work of a Cashier incharge of a Token office and a Pay office. Mr. Kishen Chand Kapur describes the duties of a Head cashier as follows:—

1. He has to keep a large amount of cash, namely the entire cash of the branch under his control and he has to get it checked by the Agent at the end of the day;
2. To supervise the work of the cashiers working under him;
3. He entrusts each cashier with a certain amount of cash in the morning for the day's work and at the end of the day receives back the balance from those cashiers after making them account for the amount spent;
4. He has to keep a record of the cheques that are credited to the constituents' accounts and is responsible to see that they are realised and that if, any one of them is dishonoured it is delivered by him to Ledger-keeper for return to the constituents concerned;
5. He controls the working of the cashiers under him in regard to the delivery of coins and notes to the public.

Duties of the cashier at the Token Office according to him are:

1. He receives cash and pays cash on the basis of vouchers prepared by the Clerk incharge;
2. He makes payment of cheques duly signed by the Clerk incharge; and

3. At the end of the day he goes along with the cash balance to the Head cashier at the Branch and delivers to him the same. He may be utilised for sorting coins on certain occasions by the Head cashier or for other odd duties.

Duties of a cashier at the Pay office are:

1. The cashier incharge at the Pay office does duty Nos. 1 and 2 mentioned above in connection with the Token Office cashier and further does;
2. The translation of Hundi-Memos;
3. He signs the Day Book for the cash balance and the Weekly memo for the cash balance;
4. He keeps the second key of the cash chest—the master key remains with the Clerk incharge;
5. He countersigns the B. C. and I. B. D. realisation advices which are prepared in duplicate for despatch to the parent branch and the branch concerned.
6. He countersigns the drafts to see that the amount deposited tallies with the amount in the draft.

The workmen argue that duties 12 to 29 are done at the Pay office by the Cashier incharge while no such duties are done by the Head cashier at the branch. The bank management replies that the countersigning cashier only certifies the correctness of the cash amount mentioned in the document and that he has nothing to do with the certification of other particulars mentioned in the document.

As regards countersigning duty, I am not prepared to minimise its value by the suggestion that the cashier certifies only the amount of the cash mentioned in the document. The workmen have proved by the evidence of Shri Ram Saran Tandon, D.W. 3, a witness produced by the bank, that they countersigned not only such documents as are connected with a cash transaction but also documents arising from transfer transactions. This would show that the cashier in his countersigning duty does not confine himself to the certification of the cash amount that has passed through his hands. This leads us to infer that he has not only to see the correctness of the amount mentioned in the documents but also all the other particulars. This D.W. 3 admitted to start with that countersignature means signing of a document after checking it and precedes final signatures by the responsible officer. This general statement must carry great weight, for, there is no reason why countersigning at a Pay office should be less close than countersigning in a branch, for the procedure of countersignature must have the same aim in both the classes of offices and must, therefore, be equally thorough. This witness also acknowledged that the basis of double signatures is that both signatories should satisfy themselves as to the truth of the facts stated in the documents of the nature of a draft and its relative advices. With that admission in the case of a draft and its relative advices by the bank's own witness, I would hold with confidence that countersignature work by the Cashier Pay office is of the same nature as in a branch office and that it involves a certain work load and responsibility as well.

Much has been made of the fact that the bank did not examine any Head cashier as their witness. The onus of proving that the duties of a cashier incharge of a Pay office or Token office were as important or even more important than the duties of a Head cashier was upon the claimants and they could not expect the bank to produce a Head cashier when a Head cashier was produced by the claimants themselves and they got out of him the fact that mechanical duties of the Head cashier were much less than the mechanical duties of a cashier incharge of a Pay office. It was not necessary for the bank to produce a Head cashier. They have rightly produced more responsible officers as witnesses who could compare at once the duties of a Head cashier with the duties of cashiers incharge of Pay offices and Token offices.

The workmen argue that they are doing more work than the Head cashier and that they must, therefore, get no less salary than the Head cashier. The evidence led by the Pay office Incharges, shows that generally there is only one cashier at the Pay office and it is only rarely that an Assistant cashier is given to him. The duty of supervision over assistant cashiers cannot be made light of. The cashiers incharge of Pay offices have even gone to the length of arguing that a Head cashier has so many assistants and that the mechanical work is mostly done by those assistants and that the cashier in fact does much less than the cashier incharge of pay offices or even his own assistants. This argument naturally flows

from utter disregard of the importance of the supervision work which in banks plays a very important part towards efficiency. If the importance of supervision were to be made light of, the supervisors should get smaller pay than the clerks whose work they supervise. Supervision carries with it considerable responsibility which only experienced and competent persons can discharge, and which contributes to the efficiency of work in no small measure. The head cashier has to handle a huge business throughout the year while the business at the pay offices is generally seasonal. The cash chest at the branch is much bigger than the cash chest at the Pay office. The Head cashier has to be very particular that the cash chest is kept properly full, that surplus funds should be deposited in the Imperial Bank of India or the Reserve Bank of India and funds obtained from them when the bank cash chest shows signs of depletion. The Head cashier has to act as the Head of the Cash department of the branch in order that the customers have all the necessary convenience and prompt attention. He is the principal representative of the Treasurer for the branch and for the pay offices and the Token offices under the branch, and keeps the Treasurer informed of the work and conduct of all subordinate cashiers.

We have also in the evidence that a Head cashier with three assistants or more can issue an effectual receipt on a single signature. This shows that the Cashier incharge of a Token office or a Pay office cannot do so. We have also to remember that generally there is only one cashier in a Pay office or a Token office and there is no question of supervision having to be exercised by the cashier incharge there. This confirms us in the conclusion that the Head cashier has much greater responsibility than the cashiers incharge of Token office or Pay office. I am quite clear that a job in a bank is not to be paid for according to the amount of clerical work involved but that efficient supervision, power of control and sense of responsibility have also to be paid for and at a much higher rate, for, they require strong moral character and longer experience. In the case of a Head cashier, all these three elements have to enter into our calculations for valuing his job. These three elements are not capable of mathematical assessment and have to be left to the discretion of employer himself. In this connection, it is not worthy that Shastri Tribunal in para. 341 remarked that the discussion before them had revealed that the responsibility of these Head cashiers is greater than the ordinary routine clerk in the Cash department and to that extent the case for higher emoluments for them stood practically admitted before them. When coming to the question of proper scale of emoluments for these Head cashiers they resorted to the device of special allowances which would reward responsibility as well as mechanical work and maintain the relative position of the worker with due regard to their seniority in service. Para. 162 of that award gives detailed reasons for such special allowances. The Tribunal pointed out that they were fixing only a minimum both for salaries and for special allowance and it left it open to the big banks and particularly their important offices to allow the incumbants of such offices more than what has been prescribed by them. I have already mentioned the importance that the Sen Tribunal attached to the Head cashier's job. My conclusion then, in respectful accord with Shastri Tribunal, is that the best manner of paying for experience, responsibility and controlling power is to give special allowances to these different cashiers and Head cashiers leaving it still open to the banks to pay more than the minimum prescribed salaries and allowances in suitable cases. It is impossible to put the head cashiers on a parity with cashiers incharge of Pay offices and Token offices. I have already placed the Cashier incharge of a Token office on the same footing with the Cashier incharge of a Pay office, because I feel that the duties of a cashier incharge of a pay office though larger in variety are likely to be lesser in volume, because a Pay office is generally a seasonal office in smaller places like Mandies while a Token office is situated in the heart of a thickly populated city to fulfil the requirements of substantial and busy merchants who might find it hard to travel large distances from their shops to the branch office which is generally situated in an open and more distant part of the town.

For reasons, given above, I direct the bank to pay these workmen allowances on the scale prescribed by Shastri Tribunal from the date of the enforcement of B. B. Singh award after deducting any sums that may have been paid to them under Shastri award or Sen award. In this course, I am encouraged by the fact that the U.P. Conciliation Board while dealing with the case of these workers had ordered payment of allowances to them. I need not take a highly technical view put forward by the bank that this Tribunal could only give them the pay of a departmental incharge and nothing else. It has been repeatedly held by the highest courts of the country that the proceedings before the Tribunal are in the nature of arbitral proceedings and that the Tribunal should give all equitable reliefs that may be deemed necessary to meet the ends of justice. Those ends of justice do justify a higher payment to these claimants than that allowed to ordinary routine cashiers known as Assistant cashiers. The bank had been giving an

allowance to them even before B. B. Singh award and that allowance was stopped when that award came into force. It would be really hard to deprive these claimants of that previous allowance and I feel justified in granting them the allowance that has been ultimately held to be proper by Shastri Tribunal. I am not forgetful of the fact that Shastri Tribunal has not made these allowances retrospective in effect but the present claimants have been fighting out their case from the very start and for reasons which have been found to be valid, at least to the extent of special allowance, although they pitched their claim too high by claiming parity with the Head cashier.

Serial No. 21—

Shri Sukhdish Narain.

Vs.

Calcutta National Bank.

Regarding. Termination of service

This bank was wound up by an Order of the Hon'ble High Court, Calcutta, dated the 2nd December, 1952 as intimated to us by the bank in their letter, dated the 6th February, 1954. The bank has pleaded rightly that no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the court. I have already accepted this plea in the case of Shri Lachman Sarup, serial No. 8 of the present reference. No proceedings can be taken accordingly.

Serial No. 22—

Shri D. D. Banerjee.

Vs.

Hindustan Commercial Bank

Regarding. Termination of service

Shri D. D. Banerjee was a permanent clerk of the Hindustan Commercial Bank Ltd., Kanpur and was retrenched on the 11th May, 1949. This retrenchment is being attacked by the workman as arbitrary and against the principle of last come and first go. Re-instatement with back pay and allowance is prayed for.

The bank pleaded that it had to close unremunerative branches in 1949 in accordance with the decision of the Board of Directors of the Bank on the advice of the Reserve Bank of India, that 19 offices were actually closed and the surplus staff had to be retrenched—D. D. Banerjee being the junior most amongst the clerical staff in U.P. branches. The bank admitted that Sen Tribunal had directed the reinstatement of Mr. Banerjee, and explained that they had actually sent him an appointment order as clerk, Meston Road, Kanpur, Sub-branch where there was a vacancy, but the letter was received back undelivered and so the vacancy had to be filled up by transferring another clerk from Jhansi, that the bank is now altogether hard up for vacancies, so many other branches having been closed thereafter, that his reinstatement at the present moment is altogether impossible for the bank.

The first question for our decision in a case of retrenchment is whether retrenchment was necessary. The management had to establish that there was retrenchment necessary on the ground of economy and then would arise the question as to the extent of retrenchment. The leading case of Vishwa Mitter Press, reported as 1952.II-LLJ. p/181, is authority on the point. The bank has filed Ex.DD/29 an extract from an enclosure to letter No. D.B.C.-2182/C-41-49, dated 22nd April, 1949 from the Reserve Bank of India, Bombay, to the Hindustan Commercial Bank Limited. From that it would appear that the Reserve Bank of India had approved of the closure of unremunerative branches. The Managing Director in his letter, dated the 29th June, 1954 has explained that in the year 1949, certain branches, which were unremunerative and were a drain on the resources of the bank, had to be closed on the advice of the Reserve Bank of India. This satisfies me as to the actual necessity for the retrenchment, because retrenchment of Mr. D. D. Banerjee is dated 11th May, 1949 i.e. after the date of Ex.DD/29.

When once we hold that the need for retrenchment was genuine it becomes very easy to decide the question of extent of retrenchment. Ordinarily, the management have the right to determine the strength of their labour force and that right cannot be curtailed by a Tribunal unless there is some proof that there were some extraneous considerations or improper motives in the matter of the choice of retrenched workers. No such motives or extraneous considerations have been alleged in the claim petition. All that is said is that the rule of

last come first go was not observed and that he was arbitrarily chosen for re-trenchment. We will scrutinise that point.

The representative of the workmen contended that seniority pool must be formed with the whole staff of the bank throughout India, while the bank maintained that the seniority pool was to be formed by U.P. branches only. In this regard, I have to remember that U.P. had its own B. B. Singh award and that the Government had stopped transfers of workers from U.P. branches to branches outside U.P. This is sufficient reason for treating U.P. alone as the seniority pool.

The following list of workmen would suffice for our scrutiny as to the proper observance of the rule of last come first go:—

Serial No.	Name	Date of appointment	Date of retrenchment	Salary	Posted at
159	Shri D. D. Banerjee . .	13-3-48	11-5-49	Rs. 60/	Head office.
160	Shri P. N. Srivastava . .	16-3-48	13-5-49	60/	Kanpur-main.
161	Shri J. N. Nayar . .	1-4-48	13-5-49	60/	Do.
162	Shri D. P. Soni . .	5-4-48	20-4-49 (resigned)	60/	Meerut City.
163	Shri D. K. Sharma . .	24-4-48	13-5-49	60/	Allahabad.
164	Shri M. L. Kalra . .	1-5-48	29-8-49 (resigned)	60/	Hazratganj, Lucknow.
165	Shri N. K. Bhargava . .	1-5-48	2-4-49	60/	Meerut Cantt.
166	Shri Ram Chandra . .	1-10-48	23-4-49	60/	Head office.
167	Shri Om Parkash Rastogi .	1-10-48	Resigned before 10-1-49 but retrenched on 11-5-49.	60/	Hazratganj Lucknow.

This list shows at once that none of the juniors to Shri D. D. Banerjee was kept on in preference to him. The case of M. L. Kalra, serial No. 164 on the seniority list as against No. 159 Shri D. D. Banerjee requires an explanation, because Shri Kalra resigned on the 29th August, 1949 while Shri D. D. Banerjee was retrenched on the 11th May, 1949. That explanation has been satisfactorily rendered. Ex. DD/1 shows that on the 11th May, 1949, retrenchment orders of M. L. Kalra, C. P. Rastogi and others were sent to the Agent, Hindustan Commercial Bank, Hazratganj, Lucknow, by the Managing Director. This shows that Kalra's retrenchment was ordered on the same day as that of D. D. Banerjee. There was no violation of the rule, 'last come first go'. The order, however, was not given effect to at once by the Agent, Hazratganj Branch, where Mr. Kalra was working, because the Agent was short of staff at his branch and detained him in the interest of work, as would appear from the letter Ex. DD/2, read with Ex. DD/3. The Head Office cannot be blamed for the peculiar situation which they had to meet at Hazratganj branch by reason of the shortage of staff. We are also impressed by the fact that this retention of Mr. Kalra at that branch was no favour done to him but was something which he did not relish, so much so, that when Mr. Kalra's relief was not forthcoming from the head office he tendered his resignation and absented himself from the office as is clear from Ex. DD/7—letter, dated 20th August, 1949. With the prospects of retrenchment before him Mr. Kalra had no seniority to keep on and accordingly resigned his appointment.

The shortage of staff at Hazratganj branch is also proved by the fact that Om Parkash Rastogi, serial No. 167, who was working at Hazratganj branch and who had resigned before the 10th January, 1949 and was even retrenched on the 11th May, 1949, was not actually relieved by the Agent, Hazratganj branch, till the 1st June, 1949, as is clear from letter Ex. DD/21, read with DD/20 and

DD/19, simply on account of shortage of staff at that branch. I am, therefore, quite satisfied that the rule of last come first go was properly followed in ordering the retrenchment and the delay that had occurred in regard to actual relief of some of the retrenched persons was on account of shortage of hands at that particular branch.

Under these circumstances, no fault can be found with the retrenchment of Mr. Banerjee by the bank. I have not lost sight of the fact that Sen Tribunal had ordered the reinstatement of this man, because at the time of those proceedings the bank had stated before that Tribunal that it had some vacancies before it. Those vacancies are, no longer available, the bank having had since to close several more branches. It has sought permission of the Labour Appellate Tribunal for retrenching 7 persons mentioned in application dated 1st September, 1953 marked Ex. DD/29-A.

The Bank did try its best to help Mr. Banerjee. On the 1st February, 1951, a registered letter, Ex. DD/32 in envelope, Ex. DD/31, was sent to Mr. Banerjee offering him a post of clerk at the Meston Road, Kanpur office of the bank in accordance with the understanding given by the bank's representative to Sen Tribunal. Mr. Banerjee was to report for duty not later than the 15th February, 1951. Continuity of service was also granted by the bank. Unfortunately, this letter, although sent by registered post acknowledgement due could not be delivered to the addressee, because he had left the place. It appears that the letter was kept in deposit for 7 days but still nobody came to call for it and a second attempt by the post office had also resulted in no better success, because D. D. Banerjee was reported to have left the place. It is certainly a very unfortunate case but Mr. Banerjee is to blame for not having arranged for the delivery of his letters reaching his address in his absence.

As regards compensation, no much can be done for Mr. Banerjee. He was taken in service on the 13th March, 1948 and had only 14 months' service to his credit at the time of his retrenchment. The bank has already paid him one month's salary in lieu of notice and as I know that this bank interprets salary as basic salary, I would order that he be paid dearness allowance as well for that one month, if that has not already been paid to him. This amount of dearness allowance shall be paid to Mr. Banerjee within six weeks of the date of the publication of the award.

Serial No. 23—

Shri Ram Jairath.

Vs.

Hindustan Commercial Bank.

Regarding, Termination of employment

This claimant was duly served with notice of these proceedings and he has not cared to put in any statement of claim. It can be easily understood why he has not done so. A reading of the Sen Tribunal in his case published as S.R.O. 456 dated the 18th August 1950, Ministry of Labour Notification, clearly shows that the workman had rendered himself liable to disciplinary action on account of irregular advances of bank money. The accounts maintained at the Meerut branch, of which he was the Sub-Agent, were impugned as false by the defence in a suit filed by the bank. I would respectfully agree with the findings of Sen Tribunal in these *ex-parte* proceedings, that his discharge was fully called for. There is no reason to grant any relief to this worker especially, when the proceedings are *ex-parte* and he has not cared to press his claim. Claim dismissed.

Serial No. 24—

Shri Lachman Swarup.

Vs.

Hindustan Commercial Bank.

Regarding, Termination of service

He joined the bank as Assistant Cashier on the 1st March, 1946 and was promoted to Head Cashier on the 6th August, 1946. On the afternoon of 12th May, 1947 his services were terminated all at once without any charge-sheet having been given to him. The bank replied that there was a change of the Treasurer, that the new Treasurer, Mr. Bishan Chand Jain, did not like to keep him on and so he was terminated when no other Treasurer even would accept him for the post of head cashier. The bank pleaded that the reinstatement was out of question because the man had reached the age of 55 and had been keeping very bad health on the statement of his own representative, Mr. J. N. Mehrotra, that the man had served the bank only for about 15 months before his termination and

that the bank could not be held responsible for the dislocation of his life, because he must have been serving elsewhere for many years before he came to this bank. The issues in this case were:

1. Was the discharge justified?
2. Is reinstatement not proper—
 - (i) in view of his illness; and
 - (ii) in view of his having approached the age of retirement.
3. To what relief by way of compensation for unemployment period is the claimant entitled, with or without reinstatement.

In this case the termination was ordered without any charge-sheet being served on him, without any explanation having been taken from him and the only ground taken was that the new Treasurer would not accept him as Head Cashier, although letter Ex. M/G shows that he would not object to his being kept on as an Assistant Cashier.

The point for decision is whether under the agreement, the Treasurer could insist upon his being discharged. I have carefully gone into the Treasurer's agreement, Ex. M/J with the Bank, which is not a very clearly worded document, but the following points emerge from it noticeably:—

- (a) Term No. 2 provides that the Treasurer shall guarantee to engage and employ all such subordinate staff consisting of the cashiers.....and such other persons as may be required for the efficient working of the cash department..... The initiative to appoint the staff mentioned above shall rest with the Treasurer but *no appointment shall take effect unless approved of in writing by the bank. Transfer, removal from one job to another and dismissal of all or any member of such staff shall also be subject to the approval of the bank.*
- (b) In term No. 3, it is provided that the bank will pay directly to each member of the Cash Department staff such salary and in such grade as the bank may agree to at the time of his appointment or thereafter.
- (c) Term No. 4 provides that in case the Treasurer is unable to provide the requisite number of persons within ten days of the creation or occurrence of the vacancy....., the bank shall be at liberty to engage as many persons as necessary and Treasurer shall be responsible for the acts and omissions of those hands.
- (d) Term No. 6 provides that the *appointment and the dismissal of the Cash Department staff shall although be virtually in the hands of the bank itself, yet all such staff shall be under the direct control and the dominion of the Treasurer who shall be solely responsible to see that each member of the Cash Department staff does his duty diligently, faithfully, honestly and properly in the best interest of the bank.*

It has to be admitted that there is no express provision in the agreement that the new Treasurer shall be responsible for the good conduct of the members of the Cash Department staff appointed by the bank and working at the time of the coming in of the new Treasurer, but the inference has to be drawn from the terms which we have already quoted. The Cash Department staff has to be approved of by the bank before appointment and their dismissal has also to be approved of by the bank. The payment of salary has to be made by the bank and it is also acknowledged in term 6, that the appointment and the dismissal of such staff shall be virtually in the hands of the bank itself. This means that the present claimant was a bank employee and the bank had to see that he was dismissed or discharged for proper reasons. Some misconduct must be attributed to him, some failure of duty or some failure to comply with the conditions of service. All that is pointed out before us is letter Ex. M/A, which shows that the new Treasurer had been told by the Manager of Meerut branch that the man was not reliable and that worked on the mind of the new Treasurer so much that he would not like him to remain as Head Cashier, although he would accept him as an Assistant Cashier. This position taken by the Treasurer is hardly satisfactory. A person, who is not reliable would be as bad as an Assistant Cashier as he would be a Head Cashier. This only means that there was some ulterior motive by this discharge. No evidence has been produced before us to show how the man had been dubbed as unreliable. The Manager was not put into the witness box nor was the Treasurer. Under these circumstances, the

decision of the Labour Appellate Tribunal in United Commercial Bank Vs. their workmen, reported as 1952-I-LLJ-p/393, would very well apply to this case. I have another case of Shri Kalyanji Dixit serial No. 25 who was discharged by the United Commercial Bank because the new Chief Cashier would not guarantee the reliability of the Assistant Cashier—Dixit. The law has been fully set out in dealing with that case and I would not repeat things here unnecessarily.

Letters Exs. M/K to M/P have been stressed by the bank to show that the other Treasurers would not accept this man. But all this correspondence is mere white-wash which would deceive nobody, because when the new Treasurer of the place would not accept him how could the Treasurers of other places accept him. It is only a show of doing justice that enquiries were addressed to other Treasurers who never knew this man and who could not have been expected, under any circumstance, to accept a stranger from another branch.

I know that the man has read upto the middle school standard and has done only as a cashier in a bank. He has no capacity for work as a clerk. We have only to see whether he can be utilised as a Head Cashier.

I realise that the man has already completed the age of 55 but there is nothing on the file to show that the bank retires people compulsorily at 55. No rules of retirement have been produced before me and so I would order reinstatement in spite of the plea of the worker having completed 55 years of age. The bank must reinstate him and utilise him till they find it desirable or necessary under the rules to retire him.

His bad health was, no doubt, seriously urged by his representative, Mr. J. N. Mehrotra, when he wanted the Court to wait for his written statement of claim. It was even stated that the man was suffering from T.B. and that he could not move from his bed. But, later on when I ordered medical examination of the claimant by the Civil Surgeon, Meerut, he was declared to be fit for the work of a cashier. He might have had bad health in the past but I have to see his present good health.

The bank led no evidence in the case, although I gathered from the statement of the claimant himself that the new Treasurer was making difficulties for him by demanding certain security. The bank has not said a word about it nor has it produced the Treasurer to say how that failure to produce certain security noted upon his mind. As explained by the claimant, this demand for security was only for the purposes of creating difficulties for his continuance in his job and I must accept that proposition in the absence of any evidence led by the bank.

As regards compensation for unemployment period which extends over five years, I feel that the man had only 2 years' service with the bank and has already had six months' pay and allowances as such compensation. In view of his having been promoted to a Head Cashier by this very bank very soon after his appointment as Assistant Cashier, I can easily say that his work was good. I would, therefore, give him another six months' pay and allowances as compensation for unemployment and this, because the law on the subject of reinstatement of cashiers who are not accepted by a new Treasurer, was not well settled before 1952, the date of the decision of the Labour Appellate Tribunal in 1952-I-LLJ-p/395 mentioned above.

The reinstatement must be made within two months of the date of the publication of this award. I have given two months time to the bank because the bank is curtailing its activities and must have enough time to adjust things. The further six months' salary and allowance awarded to him as compensation shall also be paid within that period.

Serial No. 25—

Shri Kalwanji Dixit.

Vs.

United Commercial Bank Limited.

Reg. Termination of employment

Shri Kalyanji Dixit was appointed as an Assistant Cashier, Banaras branch on the 22nd September, 1947 and on the 1st January, 1949, he was given an increment of Rs. 5, but on the 13th April, 1949, his services were terminated, because the Chief Cashier, Mr. Mehta was also terminated on that day and the new Chief Cashier, Mr. Wahi refused to stand guarantor for the work of Mr. Dixit. Mr. Dixit claims reinstatement on the ground that there was nothing against him

and that he being a servant of the bank could not be terminated without some misconduct on his part.

The bank pleaded that the present reference was bad in law, because there was no industrial dispute existing between the bank and Mr. Dixit on the date of the present reference and that there could have been no industrial dispute on that date between the parties as Mr. Dixit was not on the said date a workman within the definition of workman given in Section 2, sub-section (s) of the Industrial Disputes Act.

On the merits the bank pleaded that Mr. Dixit had been employed as Assistant Cashier under the guarantee of the Chief Cashier, Mr. Anant Ram Mehta, that he could continue in service only so long as the said guarantee lasted, that on the termination of Mr. Mehta the new Chief Cashier was not prepared to stand guarantee for Mr. Dixit and that for that reason he could not be kept on in the bank's employment as assistant cashier, a duty which requires great honesty and reliability. It was added that one month's pay was given to him in lieu of notice, that Mr. Dixit was offered an alternative employment as Godown-keeper but unluckily the scheme did not materialise as the bank could not secure the godown accounts that were in view at the time of the offer, that award of Sen Tribunal which gave Mr. Dixit no reinstatement but only compensation at six months' full salary and allowances was duly implemented by the bank and the amount duly accepted by Mr. Dixit that with that payment the dispute must be taken to have ended, so that there was no dispute left for re-adjudication by this Tribunal and that Mr. Dixit should in any case be taken to have waived his right to re-open the dispute regarding reinstatement. The Bank denied that Mr. Dixit had been without employment since the termination of his services by the bank. The following issues were framed in the case:—

1. Whether the reference to this Tribunal is bad because Dixit was not discharged during a dispute, that is, whether an industrial dispute cannot be raised by him on the ground of the dismissal itself;
2. What is the effect of implementation of the Sen Tribunal award?
3. Was the bank justified in terminating the service of Shri Kalyanji Dixit simply because of the termination of the services of Anant Ram, Chief Cashier?
4. What were the reasons for the termination of the services of Anant Ram, Chief Cashier?
5. What relief is the claimant entitled to
 - (i) Reinstatement or/and
 - (ii) Compensation.

That a worker can raise a dispute on the ground of his own dismissal, although that dismissal was not during a dispute has been now held in favour of the workman dismissed—1952-I-LLJ-p/23, Phatkar's case is the first authority on the point. I am quite conscious that it is only in the nature of an *obiter dictum*. This case was however followed in the case of Binney & Co., reported as 1952-I-LLJ-p/646, decided by the Labour Appellate Tribunal of India. There is, no doubt, that there is not much discussion of the point in this last case. This point was, however, discussed in 1953-I-LLJ-p/1, by the Allahabad High Court and on the basis of the Federal Court judgment in West India Automobile Association case reported as AIR.1949-F.C-p/111, it was held that such a dismissed worker, even though not dismissed during a dispute, could raise a dispute over his dismissal. The same view was taken in 1953-I-LLJ-p/757, the case of Swadeshi Company, by the Full Bench of the Labour Appellate Tribunal, which Bench went so far as to say that the dismissed workman could raise that dispute about his declared null and void and any payment made under that award would be liable. The said Tribunal in 1954(2)LLJ-p/446, has very recently affirmed that view as correct. It is now too late in the day to deny the workman's right to raise a dispute about his dismissal on the ground that he was not a workman as soon as he got dismissed.

The other objection that the implementation of the Sen Tribunal award put an end to the dispute or that it acted as a waiver on the part of Mr. Dixit who accepted the amount ordered by that Tribunal is equally futile. That award was declared null and void and any payment made under that award would be liable to be refunded unless some substituted order of a Tribunal is obtained to support that payment. The dispute although resolved by Sen Tribunal got a new lease of life by the annulment of that award and the case became an existing dispute by that annulment, so that the Government was under a duty to get the dispute

resolved by a fresh reference to another Tribunal. The dispute cannot, therefore, be said to be not existing at the date of the present reference.

As regards waiver, there is no authority in support of it. The payment was made under the order of a Tribunal and the bank making the payment and Mr. Dixit accepting the payment were only obeying an order of a Court. There was no undertaking given by Mr. Dixit directly or by implication that he was not going to fight his case if the law thereafter required or permitted him to. By the circumstance of annulment of Sen Award the law permitted the re-adjudication of the dispute and Mr. Dixit is entitled to fight it out.

On the merits the bank have only to say that it is understood by every Assistant Cashier that he holds his appointment so long as the guarantee given by the Chief Cashier appointing him holds good, that when Anant Ram went out his guarantee for Dixit came to an end and that the new Chief Cashier could not be compelled to give the guarantee for Mr. Dixit and that the bank would be taking a very great risk in keeping on a man for whom the new Chief Cashier was not giving a guarantee. The whole super-structure crashes down when we know that under para 8 of the Chief Cashier's agreement with the bank, the Chief Cashier agreed "to accept the appointment of and to be responsible to the bank for the good conduct of all members of the Cash Department staff 'appointed by the bank and at present in the employment of the bank' and for all subsequent members who may be so appointed". With that term of the agreement the bank could insist upon Mr. Wahi's guaranteeing the good work and honesty of Mr. Dixit. They could refuse to continue Mr. Wahi but they could not refuse to continue Mr. Dixit if the Chief Cashier, Mr. Wahi, would refuse to guarantee Mr. Dixit's honesty, under para. No. 8.

The procedure of appointment of Assistant Cashiers also leads to the same conclusion. Para. 7 of the Chief Cashier's agreement may be quoted *in-extenso* for this purpose. "The bank shall appoint a sufficient number of persons as members of the Cash Department staff who shall be the servants of the bank and the bank shall determine their respective salaries. And their appointment and dismissal will be entirely at the discretion of the bank or the person acting for it".

The dismissal is entirely in the discretion of the bank and the bank is, therefore, fastened with the duty of following rules of social justice, that is, charge-sheeting a man before dismissing him and finding him to be really unfit for continuance in the job. This was not done. Under these circumstances, reinstatement cannot be denied to the workman.

The bank has laid great stress on the point that in the year 1949, the law was rather in a nebulous condition and that the continuance of Assistant Cashiers on the termination of the Chief Cashier, appointing him was not then prevalent. My attention was particularly drawn to the penultimate para. of the award of the Labour Appellate Tribunal of India in the case of United Commercial Bank Ltd., Delhi and certain employees, reported as 1952-I-LLJ-p/393, at p/396, where the said Tribunal noted that Shri Jee Jee Bhoy had expressed the opinion that where the guaranteeing cashier had lost confidence in an employee of the Cash Department the order of reinstatement would not be appropriate and compensation would meet the requirements of the case. It was accordingly argued that the bank should not be compelled to follow a rule of law which was at the time of termination of Mr. Dixit not at all settled, that the unsettled conditions of law in 1949 should go in favour of the bank and that no order of reinstatement should be made at this long distance of time. I quite see the difficulty of the bank but I have also to see the difficulty of the Assistant Cashier, who has in his support the final decision of the Labour Appellate Tribunal of India, in 1952-I-LLJ-p/393, already mentioned above. All that I can yield in favour of the bank is that they need not pay him any further compensation beyond the six months' pay and allowances that they have already paid to him but they must reinstate him as he is anxious to be reinstated and there is nothing on the file to show that he misbehaved in any manner.

The reinstatement shall be made within six weeks of the publication of this award and the salary that will be offered to him will be the salary which he would have been getting on the date of his reinstatement if he had continued in the service of the bank from the date of his termination. No other incidental advantages shall be claimed by him, for example bonus, provident fund etc. etc. on account of long lapse of time and the unsettled condition of case law which is itself a reflection of the difficulties with which a bank is faced in adjusting the relationship between assistant cashiers and a Chief Cashier newly arrived. He has been also doing odd jobs from time to time.

In another case of a Head Cashier, Lachman Swarup, serial No. 24. I have ordered further compensation for the period of unemployment in addition to reinstatement but that was because Sen Tribunal had ordered his reinstatement and the bank had put it off on no good grounds and thus prolonged his unemployment by its own omission.

Serial No. 26—

Shri C. P. Mishra.

Vs.

Calcutta National Bank.

Regarding, Victimisation

This item has been cancelled from the Order of Reference. No orders accordingly.

Cases of serial Nos. 27 to 33 of Bikaner Bank are awaiting the result of a Writ petition in the High Court on account of a stay order passed by that court and shall be dealt with in a supplementary award.

Serial No. 34—

Shri M. B. Amin.

Vs.

Bank of Baroda.

Regarding, Reinstatement in service and payment of bonus

His allegations are that he was transferred to Bombay office in July, 1943, as a Checking Officer and that he got himself transferred to Patan branch in July, 1946 for reasons of health but that the bank again transferred him to Bombay in July, 1948 when he was 57 years old, because some of the clients of the bank at Patan complained to Bombay office of harrasment by him, that he was only enforcing the rules when demanding at least twenty-four hours notice for all their current account drawings exceeding Rs. 3,000, that the bank transferred him to Bombay without assigning any reasons and on the report of the client who was refused encashment of another cheque of Rs. 10,000 after one cheque of Rs. 10,000 had been cashed on that very day.

Shri Amin represented to the bank that Bombay climate did not suit him and requested them to post him at any other branch of it other than Bombay but without success, that there was then no other course open to him but to retire and he asked for retirement which he now calls a forced retirement. He also claimed bonus for 8 months' of active service in the year 1948 but the claim was rejected by the bank and he pressed for that bonus. He claims a total sum of Rs. 23,817 by way of back pay etc. in addition to his reinstatement.

The bank pleaded that the claimant was an officer and his case could not fall under the Industrial Disputes Act. It also pleaded that the transfer was in the ordinary course of business and not in pursuance of any complaint by customers and that Mr. Amin himself chose to retire of his own free will and was never forced to retire. They denied all the amounts of his claim for reasons which need not be detailed, were because on careful consideration of the whole law on the point I cannot but hold that Mr. Amin is not a workman.

Mr. Amin was categorically asked why he should not be taken to be an officer as distinguished from a workman. We will take his points seriatim:—

1. While in Bombay office from July, 1943 to July, 1946, I used to sign the attendance roll and enter time of both arrival and departure while the officers were not signing that register, namely Manager, Accountant and Assistant Accountant. The bank's reply to this is that in July, 1942 he was appointed to 'G' grade of officers on a salary of Rs. 200 with biennial increment of Rs. 25. Mr. Amin in his very statement of claim described himself as a Checking Officer. It was also explained that the signing of the attendance register does not mean that the person signing in the register is not an officer, because the signing of the register is under the Shops & Establishments Act, Bombay, which does not exempt all officers from signing the attendance register but only certain officers to whom the restrictions as to hours of work do not apply. It is also pointed out that there is a separate rate of dearness allowance for officers and Mr. Amin was getting that officers' rate of dearness allowance. After carefully considering the matter I cannot hold that simply because of the signing of the attendance register, a man would become merely a workman as distinguished from an officer. I accept the explanation given by the bank in the absence of any rebuttal by Mr. Amin that the attendance register was kept under the Shops and Establishment Act, Bombay and that that Act makes distinction between an employer and a person

employed. There is no distinction between an officer and a workman as we have in a bank. An employer includes the Manager, Agent or the other person acting in the general management or control of an establishment. At Bombay, Mr. Amin, as a Checking Officer, might not have been an employer and would have to sign the register of attendance.

He was asked to quote any authority from the awards of Industrial Tribunals in support of his contention that he was a workman and all that he was able to say was that the designation, 'Agent' was given to him by the bank for banking convenience, that even a man drawing not more than Rs. 200 was given such a designation. His admission that he was designated an Agent led to further interrogation as to his powers as an Agent and he admitted:

- (a) that he could advance Rs. 1,000 without any security to any person whom he considered reliable; and
- (b) Rs. 10,000 to a reliable firm against agricultural produce.
- (c) He could endorse cheques, hundies, pro-notes, dividend warrants etc. on behalf of the bank and receive payments about them.
- (d) He could accept deposits from all sorts of customers.
- (e) He could keep in safe custody valuable securities—jewellery etc. in sealed boxes for the customers and also control the safe deposit lockers.
- (f) He could grant to his subordinate privilege leave only for one week without any reference to Head Office but for a longer period he had to refer the case to Head Office.

He emphasized that he *had no power of appointment even of a peon*, that he could not grant any promotion but could only recommend it.

Against this statement of Mr. Amin, we have the statement of Mr. Desai the representative of the bank that Mr. Amin could grant one month's privilege leave to any clerk subordinate to him without reference to the head office.

It does not at all matter what period of privilege leave could be granted by Mr. Amin to his subordinate, so long as some privilege leave could be granted by him without reference to his head office. This is a very important power that would distinguish an officer from a workman.

We have discussed in detail the law bearing upon the question whether a Manager or Agent of the bank is a workman in this very award in the case of serial No. 45 A. R. Gupta and I would not repeat all that discussion here. In the words of Justice Bind Basni Prasad, powers such as, passing final orders for payment, signing and receiving documents on behalf of the bank, appointment and punishment of staff and grant of leave to the staff are some of the attributes of officers and a man may be an officer even though he may not possess all these attributes the test being whether his duties and responsibilities are of a directional or controlling nature throwing upon him the work of taking final decision in most of the matters which come to his hands. With this yard-stick before us, we can easily hold that the powers (a), (b), (c), (d) and (e) alongwith the power to grant the privilege leave make the agent clearly an officer of the bank. I have only to add that Mr. Amin was not able to quote a single precedent from the decided cases in his favour. I, therefore, hold that his dispute is not an industrial dispute and that this Tribunal has no jurisdiction in regard thereto.

But even if, I had jurisdiction I would at once hold that it was a case of voluntary retirement and not a forced retirement. A man may choose for the sake of his health not to serve at a particular place and when he exercises that choice with eyes open he cannot complain that he was forced to that choice. He could have raised a dispute over his transfer itself if he thought that that transfer was not justified or was beyond the scope of the management function but when he takes the cold step of asking for permission to retire before the expiry of his agreement he gets altogether out of court. Such retirements cannot be called forced retirements. There was the clear act of choice by the employee himself. On one point I do feel that the management has been rather hard upon him. that is, in regard to the non-payment of bonus for eight months' of active service in the year 1948. The established rule is that a proportionate amount of bonus must be paid to the employee. See 1951(2)173-LLJ and 1954(1)742.

As I have no jurisdiction in the case I cannot order any such grant but I would certainly take this opportunity to recommend to the bank that it must pay to its old servant proportionate bonus for eight months for 1948 and thus earn his gratitude.

Serial No. 35—

Shri U. Surendra Sheoni.

Vs.

Canara Bank, Regarding Discharge from service.

Shri U. Shenoi alleged that great injustice had been done to him and that he was victimised under one pretext or another by the bank. This was the conclusion which he drew in his statement of claim from the allegations of fact that he had made. These allegations were that in 1946 while at Bombay, he took active part in forming the Bank Employees' Union at the place and was appointed Secretary of the Union, that in November, 1946, he was transferred to Poona in spite of his request to the contrary but that he was told that the transfer was for a short period and that he would be retransferred very soon to Bombay. He added that in August, 1947, while he was still at Poona he was transferred to Karachi, that he requested the bank to alter the said transfer order in view of the communal disturbances at that place, that it was only after his orders of termination of service were actually passed that the said transfer was cancelled and he was offered Secunderabad instead, that he objected to that transfer in view of the apprehension of communal riots there and he was then given Nagpur, that this cancellations of transfer deprived him of his salary for about a month. Then he alleged that he was transferred from Nagpur to Manglore and he claimed second class railway fare to which he was entitled under the rules, but that the bank charged him with travelling intermediate class and claiming second class fare and in the result first suspended him and then dismissed him on the 4th November, 1948, without giving him any opportunity to cross-examine the witnesses or to produce any defence evidence. He claims reinstatement with sufficient compensation as also costs of the proceedings.

The bank denied in toto the charge of victimisation by the several transfers of the claimant and explains them as transfers in the ordinary course of business. It pleaded that he had been given special promotions and special considerations on all sorts of occasions. The detailed case of the bank would be set forth while discussing the evidence on the point of victimisation. With regard to the dismissal of the claimant for charging second class fare from Nagpur to Manglore while he had travelled Inter the bank excused its failure to give opportunity to the claimant to cross-examine the witnesses and to produce his rebuttal by the fact of claimant's total failure to recollect facts when asked to explain the overcharge and answer questions put to him in respect of that overcharge. The bank took objections to the jurisdiction of the court by reason of the invalidity of the reference, pleading that the dispute was not an industrial dispute but an individual dispute, that the claimant was not a workman at the time of the reference, that the dismissal was made when the appropriate Government was the Provincial Government and not the Central Government which was now making the reference. It also pleaded that the Madras Shops and Establishments Act provided for an appeal against the order of dismissal and that by reason of his failure to lodge that appeal the claimant had no right to come to the Industrial Tribunal.

The following issues were framed.

1. Is the dispute between the parties an industrial dispute?
2. Whether the Union took up the dispute of U. S. Shenoi on behalf of the workers in general?
3. Does Madras Shops and Establishments Act bar the present suit in so far as U. S. Shenoi did not appeal from the order of dismissal within the period prescribed therein?
4. Did U. S. Shenoi travel by Inter class while he charged for the Second Class?
5. Does this conduct justify his dismissal?
6. Was the dismissal an act of victimisation.
7. Was the enquiry held by the bank into the said charge proper and according to the rules of natural justice and rules of the bank?
8. If reinstatement is granted what further compensation is U. S. Shenoi entitled to?
9. If he be not considered entitled to reinstatement what compensation would he be entitled to?

I will take up issue No. 3 first, namely whether the Industrial Disputes Act could be invoked by the workman when he had a right of appeal given to him by the Madras Shops and Establishments Act. The claimant's answer to the objection was that there were no rules prescribed under the Madras Act at the date

of his dismissal. The dismissal is dated 4th November, 1948 and the rules under the Madras Act were issued on the 5th November, 1948, as G.O.-Ms. No. 5484-Development. Rule 9 reads as follows:—

“Appeals under section 41.—(1) The Commissioner of Labour shall be the appellate authority for the purpose of hearing appeals under sub-section (2) of Section 41 and any such appeal shall be preferred by the person employed within thirty days from the date on and from which his services are dispensed with.

(2).....(3).....”

The period of 30 days that was given to him for appeal fell the whole of it after the date of the publication of the rules. It is also in the evidence that the order dated the 4th November, 1948 was communicated to the claimant after a couple of days. The workman could have easily appealed against his dismissal to the Labour Commissioner, if he wanted to. This ground, therefore, cannot help the claimant.

But the clinching reply to the employer's objection is that there were two remedies open to him namely, an appeal under section 41, para. 2 of the Madras Shops and Establishments Act, 1947, Madras Act No. XXXVI of 1947, and the right of obtaining a reference under the Industrial Disputes Act for the adjudication of his dispute and that he had the choice of the remedy. He exercised that choice because he could claim reinstatement from an Industrial Tribunal, which reinstatement the Labour Commissioner had not the power to order, even if the appeal were successful. A careful examination of the Madras Act shows that Section 50 of that Act gives the dismissed employee a right of choice. Section 50 reads as follows:—

“Nothing contained in this Act shall affect any right or privileges which any person employed in any establishment is entitled to, on the date on which this Act comes into operation in respect of such establishment, under any other law, contract, custom or usage applicable to such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.”

The claimant has rightly pointed out that he wanted reinstatement and he could not get it from the Labour Commissioner, who was to hear the appeal and he could claim the right of having his case adjudicated upon by an Industrial Tribunal, even in the presence of Section 41 of the Madras Act. There is support for this view in 1954-I-LLJ-424, a case of Dinamani Vs. Tiruchirapalli and their workers. This issue must be found against the management.

*Issue No. 1.—*With regard to the objection that it is not an industrial dispute but is an individual dispute the position of the bank becomes untenable by reason of the Full Bench decision of the Labour Appellate Tribunal in the Swedeshi Cotton Mills Company case reported as 1953-I-LLJ-757. The question referred to the Full Bench was, when a dispute is raised by a workman personally and individually which is connected with his employment or non-employment or his terms of employment or conditions of labour, whether such a dispute is an industrial dispute within the meaning of section (k) of the Industrial Disputes Act, 1947. All the cases now relied on by the bank have been discussed therein and the said Tribunal has also taken full notice of the fact that the remarks of the Federal Court in the case of Western India Automobile Association Vs. Industrial Tribunal, Bombay, were in the nature of *obiter dicta*, and still held that it would result in an anomaly if individual disputes be excluded from the purview of the Act; for in that case whereas a workman wrongly dismissed during the pendency of adjudication proceedings without the necessary permission from the Tribunal, could move personally and individually and be entitled to reinstatement and other reliefs which an Industrial Tribunal alone can grant, one dismissed in exactly similar circumstances when no adjudication proceedings were pending would not be entitled to those reliefs but only such relief as the Civil Court could grant. They accordingly held that there were no provisions in the Act which would cut down the plain meaning of the words used in section 2(k) interpreted with the aid of section 13(2) of the General Clauses Act X of 1947. In the result they answered the question referred to them in the affirmative. With this authority before us, which is binding on us in preference to the rulings of the High Court, it is not necessary to discuss any of those High Court rulings which have taken a different view. I, therefore, hold that the present dispute is an industrial dispute and that Mr. Shenoi can individually and personally raise it. He need not show any espousal of his cause by a Union.

As the result of the finding given in the last para., I need not discuss the evidence led by the claimant that his case was being taken up by the Union from the very start, that although he had himself presented the statement of claim before Sen Tribunal yet a representative of the Union was accompanying him at the time. The record of Sen Tribunal does not throw any light on that point of fact and in the present proceedings the officer of the Union has been throughout representing him, but as I have said above this aspect of the matter has become redundant by reason of Swedeshi Cotton Mills Company case (1953-I-LLJ-757) and a recent ruling of the High Court of Allahabad in Newspaper Limited, Allahabad and the State Industrial Tribunal, Uttar Pradesh and others reported as (1954-II-LLJ-263). This disposes of issue No. 2.

Issue No. 4.—The evidence before this Tribunal does not support the plea that Mr. Shenoi travelled Inter Class. Two witnesses were produced by the bank—S. Sripad Rao, M.W. 1 and Shri Nagesh Rao, M.W. 2. Sripad Rao is absolutely unhelpful. He cannot recollect whether he went to Nagpur railway station to see off Mr. Shenoi when he was going on transfer to Mangalore but he adds, "I do not think I met him at the railway station even by chance on that occasion". His attention was drawn to his original statement, D.W. 1/A, appearing on leaf 18 of the file, M/C, containing the original documents relied on and produced by the bank and he was asked to refresh his memory by the same. He stated that he did not still recollect whether he went to the railway station or not but he admitted that he had signed the statement and that he had stated therein what had stuck in his memory at that time. He, however, was bold enough to say that he never went to the Nagpur station on the day of Shenoi's departure and that the statement D.W. 1/A is false and that he does not know that Shenoi had travelled Inter class or that he had not been able to get reservation in Second class. I am quite conscious that the statement Ex. D.W. 1/A was never taken on oath and that the witness was not cross-examined by Mr. Shenoi. I cannot make any use of the statement D.W. 1/A against Mr. Shenoi. Shri Nagesh Rao was working as Accountant, Nagpur at the time of Mr. Shenoi's transfer to Mangalore. This witness too recollects nothing. He does not even remember if the General Manager asked him as to Shenoi's journey from Nagpur on the occasion of his transfer. He does admit that the General Manager sent him one or two letters asking him to come to Bombay, that he went to the post office and phoned him as to what the matter was but he is unable to recollect what the General Manager replied to him on the phone or what conversation passed between him and the General Manager on the phone. On a direct question put to him he persisted in saying that he could not recollect if the phone conversation was at all about Shenoi's journey from Nagpur.

These two witnesses accordingly yield nothing against the claimant and the General Manager has no personal information about the journey of Mr. Shenoi by Inter class. He pleads that these two witnesses have gone back upon their statements before him and that he was fully justified in acting upon their statements when made to him during dispute with regard to travelling allowance in 1948. I could have very easily sympathised with him and justified his action on the basis of those statements, although retracted at this trial, if those witnesses had been subjected to cross-examination. It is admitted that there was no cross-examination, that the statement of Sripad Rao was recorded in the absence of Mr. Shenoi, that Nagesh Rao statement was not even recorded and remained only an oral communication.

The General Manager has emphasized that he demanded the explanation from Mr. Shenoi (see page 14 of Ex. M/A, book of documents on which the bank relies) that Mr. Shenoi explained by his letter dated 11th August, 1948 Ex. M/A, p/15, that he had verbally explained the matter fully at the interview of 6th August at the house of the General Manager and that he had only to repeat what he had personally explained on that occasion. He wrote, "I had to spend the amount for which I had submitted the bill namely, Rs. 131. I would again like to repeat that I had actually to spend the amount for which I had submitted the bill. The existence of the rule under which I claimed second class fare was pointed out in my letter, because in your letter No. 8/HO/14/1726, dated 14th June, you had written in the remarks column that only third class fare is permissible. I only wanted to correct a wrong statement which I thought was mentioned only as a technical objection. Further regarding D.A. the rules were strictly adhered to. I felt that if the rules were followed in the case of fare also I would have got the amount I had actually to spend.

Para. 5.—At the same time, I never wanted to rake the matter but only wanted to make it clear and convincing to you that I was not dishonest in submitting the bill. That is why I did not even request you to sanction the difference nor even did I request you to send a reply.

Para. 6.—

Para. 7.—Further in the letter under reference you have stated that on reliable information as well as on the tenor of my letter you apprehend that I had incurred far lower expenditure. In my letter I think I have clearly stated that I have incurred expenditure to the extent of the amount and therefore, how the tenor of it caused the apprehension, is not clear to me. If, however, there is anything to warrant it I would request you to ascribe it to my imperfect expression rather than to a defect in my character. Regarding other information stated to be reliable, I can only submit that the information received by you is contrary to facts. In the absence of particulars and full details I cannot explain how it is not true.

Para. 8.—

Para. 9.—

Para. 10.—

Para. 11.—

Para. 12.—If however, you want any further elucidation I may be directed to give it and I will be only too glad and ready to furnish the information. Since I have made it clear that my character is not defective, I hope you will be good enough to cancel the suspension order even if further clarification is deemed necessary."

The General Manager argues on the basis of this letter that Mr. Shenoi was conscious of his error so much so that he did not even request him to sanction the difference or even to send a reply, that in order to clinch the matter he asked Mr. Shenoi to make definite answers to certain other questions bearing on the subject of his journey. These questions are to be found on page 16 of M/A as follows:—

1. When did you start from Nagpur and by which train?
2. Did you break your journey from Nagpur to Madras at any place? If so, mention the place or places where you broke the journey and the period of your stay at such place or places and the date or dates of your starting from such place or places.
3. Did you travel from Nagpur to Madras throughout second class?
4. When did you start from Madras and by which train.
5. Did you break your journey from Madras to Mangalore at any place? If so, mention the place or places where you broke the journey and the period of your stay at such place or places and the date or dates and the train by which you started from such place or places.
6. Did you travel from Madras to Mangalore throughout by second class?

The General Manager complains that Mr. Shenoi disposed of all these questions with a total refusal to answer them by saying, "as I do not maintain a diary and also I cannot recall the various particulars called for in the letter under reference at this distance of time I am unable to give definite answers to your questions.....". This letter of Mr. Shenoi dated the 17th September, 1948, is to be found on page 17 of Ex. M/A and the General Manager builds up a defence for his failure to examine the witnesses in Shenoi's presence, so that he might cross-examine them and to let him produce evidence in rebuttal. The General Manager's simple argument is that when Shenoi was not recollecting anything he could not have put any questions to the witnesses to test their memory or their truthfulness. I cannot agree with him there. The accused person has got the right to keep mum till he has heard the evidence against him and no one can blame him if he does not speak before he has cross-examined the prosecution witnesses. When Mr. Shenoi was pleading want of recollection he made impossible further search for evidence against him from railway records etc. he was fearing lest he might fall into a pit by his answers but this would not excuse the bank's failure to let him hear the witnesses and cross-examine them. I am quite conscious that Mr. Shenoi could not have lost his memory altogether of such a recent journey which had given rise to a serious charge against him but I cannot at the same time blame him for not assisting the General Manager with information which might be utilised against him. To say that this silence amounted to a confession would be in entire disregard of the principles of legal or equitable jurisprudence. The result is that the General Manager based his findings on evidence which was not

subjected to the test of cross-examination and which was not even taken in the presence of Mr. Shenoi and such a finding cannot be possibly supported by any Tribunal. Mr. Shenoi has also complained that even after the finding on the facts against him he was not given an opportunity to explain the propriety of the punishment proposed against him before that punishment was actually ordered. Reliance is placed on 1954-I-LLJ-192. The only answer that the General Manager has been able to make is that it is a recent ruling and that the circumstances of 1948 should be taken into consideration. There is something to be said for that view, so far as this part of the objection is concerned but the necessity for examining witnesses in the presence of the accused, for giving the accused an opportunity to cross-examine them and for giving an opportunity to the accused to give evidence in rebuttal of the charge is a matter of fundamental nature which has had judicial recognition at all times within living memory. The dismissal is in violation of the principles of natural justice and must be set aside. When the dismissal is set aside for these reasons it is really unnecessary to discuss the voluminous evidence with regard to the dismissal having been motivated by a desire to punish him for Union activities. I will still make a brief survey of that evidence.

The first complaint of Mr. Shenoi is that he was transferred to Poona on an understanding that he would be soon brought back to Bombay and that he was not only not brought back to Bombay but ordered to be transferred to Karachi. The transfer to Poona was a feather in the cap of Mr. Shenoi, because it meant higher status and there is nothing on the file to show that he did not like that transfer. A letter from Mr. Kinney to him has been produced by him to show that he had Union activities, shows at the same time that he was not being in any way looked askance for that reason but that he was being looked up to even by the management as a valued worker, whose co-operation was being asked in the interests of discipline. It also shows that Mr. Shenoi was asking to be reverted to Bombay from Poona, because he did not want to be thought that he had left the Union and had accepted a better position. This definitely shows that Mr. Shenoi by going to Poona had occupied a better position and his transfer to Poona could not be at all considered as any disfavour to him.

The transfer to Karachi was ordered but it was withdrawn when the management found that even the prospect of termination of service would not induce Mr. Shenoi to go to Karachi and the management felt convinced that Mr. Shenoi was refusing to go to Karachi for a genuine fear of the communal situation there. The same was the situation with regard to the transfer to Secunderabad. He was after all given Nagpur to which he had no objection and up till then there was no real harm done to him. He complains that he lost one month's salary because he did not at once go to Karachi and tried to get his transfer to Karachi and Secunderabad cancelled. It always takes sometime for the management to correctly gauge the motives of a subordinate for not complying with its orders. They cannot be asked to pay a man for the period for which he has not worked which period he has had to spend in going about protesting against the orders of the management.

We have also to remember that Shenoi was given special increments of Rs. 20 and Rs. 31 before being sent to Nagpur. He could not have expected any better favour. We gather from Shenoi's letter on page 52 of M/A that Nagpur was given to him, because he had expressed that as an alternative to Secunderabad he will have no objection to his transfer to Nagpur. The transfer to Mangalore was asked for by him and it was his home place. On page 58 of Ex. M/A, the Nagpur Manager recommended his transfer to Bombay or Mangalore for reasons of health and this because Mr. Shenoi himself told the Manager that he would like to be transferred to Bombay or Mangalore for reasons of health. The acceptance of this request of Mr. Shenoi by the management confirms me in the conclusion that he was receiving every favourable consideration. I am quite clear that upto the date of his transfer to Mangalore there was no desire on the part of the management to get rid of him, that he was given every consideration on the occasion of his transfers. We cannot forget that a transfer unless it is made with ulterior motives is an ordinary incident of service and a worker's position in the Union is no reason for his refusing to obey an order of transfer. I am, therefore, unable to find that the present dismissal had anything to do with his union activities. The management had applied a very stiff standard of morality to his case and it may well be that the General Manager had honestly in view a very high standard of conduct on the part of bank employees. He could have overlooked the matter when Shenoi was not claiming anything more than what had been passed by the bank as his T.A. In so far as that dismissal ignored the principles of natural justice, I have set it aside and nothing more need be done. He might have just warned the youngman for the future drawing his pointed

attention to the high standard of conduct which he expected from his subordinates. A black mark might have been the utmost punishment in such a case where the claim was not being pressed by the worker.

The dismissal is set aside as being opposed to the rules of natural justice and as being too severe a punishment in a case of this sort. I direct that he be reinstated within two months of the publication of this award and that he be given the salary which he would have been drawing on the date of the reinstatement if there had been no dismissal and that his seniority as it existed on the date of reinstatement shall continue to have effect till the date of his reinstatement. Mr. Shenoi got an appointment in another company very soon after his dismissal. In view of this the other adjustments I consider unnecessary. I cannot forget that Mr. Shenoi had not distinctly stated anywhere that he had actually bought a second class ticket. His explanation is couched in the language of casuistry when he states that he had spent the amount which he had claimed. It is possible that he might have had paid money to some railway official in order to get a seat in the train for which he had not obtained any reservation and that he had travelled for some portion of the journey by a lower class. He will be paid Rs. 2,000 (cash) by way of compensation for unemployment and Rs. 1,500 as costs of these proceedings and the proceedings before Sen Tribunal. He had to come to Delhi all the way from Bombay for prosecuting this case and so I have not hesitated in making the figure of costs respectable enough. His service shall, however, be treated as continuous for the purpose of gratuity. Provident fund benefit he shall have only after he actually re-joins. Leave, he must have been taking in the alternative employment that he had accepted. He might have had bonus in the other company which he served after dismissal. These considerations make it unnecessary to order point to point adjustment.

The total sum of 3,500 mentioned above shall be paid within two months of the date of the publication of this award.

In ordering the reinstatement I have kept before myself the Bank's objection that after 6 years Mr. U. S. Shenoi will not be able to adjust himself to the bank's routine as changed from time to time. This objection can be repelled by the simple argument that Shenoi is not responsible for the delay and that his youth and general ability can guarantee his power of adjustment to changed routine of bank work which he had been doing well when he was there.

Serial No. 36—

Shri D. J. Ladha.

Vs.

Laxmi Bank.

Regarding Dismissal from service.

Mr. Ladha did not attend in spite of the service of the notice on him. The proceedings were taken *ex-parte* against him. The bank was asked to file a written statement and an affidavit in reply to the claim as already put by Mr. Ladha before Sen Tribunal. They have done so. They have also filed a copy of the Award of Sen Tribunal in the case of this worker.

Reading the written statement and the affidavit with the claim petition as laid before Sen Tribunal I have no hesitation in finding that the bank were very patient with the erratic behaviour of this workman. His plea was that on the 13th June, 1947, he left the bank premises, because he was discourteously told by the Manager to leave the office. He never came back to the office and five days later he wrote to the bank that he could not return to duty unless he was asked to rejoin. He persistently kept absent and on 8th January 1949, the bank terminated his services with effect from 6th July 1947.

The bank's reply was that on the 13th June, 1947, his request for an advance was turned down and he created an unpleasant scene and showed disorderly behaviour, that on that account he was told to leave the office, which meant that he was not to create a scene on that particular occasion and that it did not mean any permanent direction to him that he stood discharged. It was added in the affidavit that after remaining absent till 27th June, 1947, Shri Ladha attended office on the 28th & 30th June, 2nd, 3rd and 4th July, 1947, the intervening days being holidays, that on the 5th July, he again absented himself and remained absent all along thereafter without any intimation to the office, that after waiting till the 6th January 1948, the bank terminated his services for continued absence. It is also in that affidavit that Shri Ladha signed the Muster-Roll on the 28th June and from July 2 to 4th, 1947. It is, therefore, clear that the words that he should leave the office, uttered at a time when he was making himself unpleasant over the refusal of his request for advance, were meant only to draw his attention to the undesirable behaviour in not befitting his position in a public office, like

the bank. He himself realised that it was a temporary direction, because he came back to duty on the 28th June and worked till the 4th July, 1947. His continued absence thereafter certainly makes him liable to be terminated. His claim even as laid before Sen Tribunal must be and is hereby dismissed in these *ex-parte* proceedings.

Serial No. 37—

Shri Bijai Singh Kapur and 4 others.

Versus

Hindustan Commercial Bank.

Reg. Implementation of Shri B. B. Singh's Award.

Shri B. S. Kapur, Officer, Incharge, Datia office of the Hindustan Commercial Bank Ltd., Shri K. K. Tewari, Cashier at Datia, Ram Nath & Panna, Peons at Datia have claimed pay and allowances at the rate allowed by B. B. Singh award on the ground that Datia office though situated outside United Provinces and in an Indian State at the time of B. B. Singh, was all along managed by Karpur, Head office of the bank direct and that leave rules of B. B. Singh award were also applied to them, that some of the workers at Datia office had been paid according to that award, that there was no reason why discrimination should be allowed to be made between one worker and another of Datia office, that they should all get the salary and allowances in terms of the said award. It was also pointed out that during the trial of this dispute before Sen Tribunal the Bank gave an understanding that Datia workmen of the bank would be given the benefits of B. B. Singh award from the date that Datia was merged into the Indian Union and that that understanding must be given effect to. They ask for pay and allowances on the scales laid down in B. B. Singh award.

The bank replied that B. B. Singh award was applicable only to U.P. offices of the bank, that the payments made to some of the Datia workers of the bank in terms of B. B. Singh award were so made, because they were actually employed in a U.P. office of the bank when the award was enforced and that the award did in terms apply to them. The case of the present claimants was distinguished on the ground that they were at Datia office when that award was enforced and continued there even thereafter. The bank admitted that an understanding had been given before Sen Tribunal but pleaded its inability to give effect to that understanding by reason of the subsequent poor financial condition of the bank. The issues framed were;

Should the B. B. Singh award be made applicable to the workmen of Datia bank office:

- (i) on general grounds including discrimination;
- (ii) On the ground of understanding given by the bank before Sen Tribunal and honoured by the workmen.

It has to be admitted that B. B. Singh award does not apply in terms to the claimants, for it applies only to the U.P. offices of the bank and Datia was not a part of U.P. I want to emphasise that the reference order itself related to the U.P. offices of the bank mentioned in the schedule.

As regards discrimination, the only evidence on the file is the debit advice, Ex. W/A, which shows that K. L. Kapoor, who was Sub Agent, Jhansi on the date of that advice, was paid Rs. 61-13-0 on account of difference in the amounts of the salary and dearness allowance from 1st January 1947 to 13th April 1947. I want to emphasise that this payment was made in June, 1947, that is, at a time when K. L. Kapoor was stationed at Jhansi and that the period 1st January, 1947 to 13th April 1947 was the period during which he had been stationed at Datia. It is urged that at Jhansi he was entitled to B. B. Singh award—Scale of salary and D.A. and that he was given that scale from the date of the enforcement of B. B. Singh award and not only from the date of his transfer from Datia to Jhansi. It is suggested, although not proved, that he might have been working in some of the U.P. branches before 1st January 1947. The workmen did not explain how this case was analogous to their own. The claimants, it appears, were never in a U.P. branch from 1st January 1947 onwards till the date of their claim petition.

It was urged that transfer from Datia to a U.P. branch is common but what should have been shown is that transfer from U.P. branch to Datia is also common and this is not shown.

The strongest point in favour of the workers is the understanding given by the bank before Sen Tribunal. Sen award says, "The bank is however making enquiries as to when the State of Datia has been merged in the Indian Union and

agrees that as soon as such information is available the provisions of Mr. B. B. Singh award would be made applicable to those employees with effect from the date of the merger. Mr. J. N. Mehrotra for the employees agrees with the suggestion, so no direction from us is necessary". It is clear that the workmen's representative agreed to the offer made by the bank representative that B. B. Singh award should apply to the workers of Datia from the date of the merger of Datia into the Indian Union, 'of course not from the date of the enforcement of B. B. Singh award in U.P.' In pursuance of this offer the workmen accepted the offer and did not press the case for application of the said award to them from the date of its enforcement. Thus the workmen honoured the understanding and altered their position in the previous proceedings in consequence thereof. They are entitled now to urge that the bank should not be allowed to go back on the understanding given by it and accepted and honoured by the workers. Thus I will not permit the bank to plead their financial weakness at the present movement against an offer duly accepted by the workers and given effect to by them. I will, therefore, hold that B. B. Singh award must apply to Datia workers from the date of Datia States merger into the Indian Union.

On the file the date of the said merger has not been proved and so I have to direct that these workers must be paid their salaries and allowances from the said merger date which can be found out at the time of the implementation of this award.

Bijai Singh Kapur was not given the advantage of Sen award while the three other workers were given that advantage and Sen award salaries were higher than those of the B. B. Singh award. These three workers shall be paid salary and D. A. according to B. B. Singh award till the date from which they were paid according to Sen award.

In the case of Bijai Singh, the salary and allowances according to B. B. Singh award, shall be paid to him till the date of the enforcement of this Tribunal's award or to the date of the enforcement of Shastri Tribunal award (as modified by Labour Appellate Tribunal award and the orders of the Government on those two awards,) whichever is earlier.

Serial No. 38

Shri Brij Lal Rawat.

Vs.

Hindustan Commercial Bank.

Reg. Reduction in salary and allowance.

His case is that B. B. Singh award was applied to him from the 1st Jan. 1947 when he was working as Officer-in-charge at Chirgaon office, district Jhansi, that he was transferred from Chirgaon to Datia which is outside U.P. and that on that ground the benefits of B. B. Singh award already given to him were discontinued from the 15th June, 1947, that the All India Industrial Tribunal at Calcutta (He means Sen Tribunal) by their award on page 478 of the *Gazette of India* dated 26th April, 1950, ordered that he should have the full benefits of B. B. Singh award in spite of his transfer, that in implementing that award the Bank did not allow him his dues on account of the dearness allowance under B. B. Singh award nor the interim relief which had been ordered by that Tribunal, that these items still remain to be paid and that these should be now ordered in his favour.

He further alleged that he had been retrenched by letter dated 12th October, 1950, simply because he had put in his claim for his arrears before Sen Tribunal and that his case of termination of service was one of victimisation. He asked for re-instatement.

The Hindustan Commercial Bank pleaded that under the Sen Tribunal award he had to be paid 'salary' according to B. B. Singh award and that the word, 'Salary' did not cover dearness allowance.

In regard to the retrenchment the bank pleaded that the staff had become surplus and that there is no possibility of their taking him back.

The following issues were framed:—

- (1) Is the retrenchment or discharge of Mr. Rawat for bonafide trade reasons and does not amount to retrenchment;
- (2) Was he retrenched before juniors to him for good reasons of efficiency combined with principle of 'last come first go';
- (3) To what arrears of allowance under B. B. Singh award is he entitled; and

(4) To what compensation is he entitled;

(i) If re-instatement is granted.

(ii) If re-instatement is not granted.

I am now quite clear that the present reference Order cannot cover the question of retrenchment. The dispute referred to me is about reduction in salary and allowance. The argument that the retrenchment issue is incidental to the dispute referred to us in so far as the retrenchment is alleged to be due to the dispute waged by the worker before the Sen Tribunal is absolutely unconvincing. It may well become the subject matter of a separate dispute if referred by the Government by another Order but the present Order of reference cannot possibly cover the question of retrenchment.

Some interim relief was mentioned in the statement of claim but it was not at all pressed before me. I, therefore, leave it out of account. I have also to add that the reference does not at all mention any such interim relief. I have, therefore, only to go into the question of reduction in salary and allowance.

Sen award did, no doubt, mention the grant of *salary* under B. B. Singh award to this man. The word, 'salary' would not mean only basic salary but dearness allowance as well, because the dispute really was whether the man's emoluments should be governed by B. B. Singh award or not. B. B. Singh award covers basic salary as well as dearness allowance. If once it is admitted that B. B. Singh award is to apply, the man must receive basic salary as well as dearness allowance, according to that award. I, therefore, have no hesitation in holding that the bank was not right in paying him salary according to B. B. Singh award and dearness allowance on some other basis. He must be paid dearness allowance according to the scale laid down in that award. Rs. 656-6-0 is the difference in the dearness allowance upto the 16th October, 1950, namely the date of his retrenchment. This amount is clearly due to him and I order that it be paid to him. The claimant, however, asks for dearness allowance according to B. B. Singh award even for the three months notice period after the date of his actual retrenchment on the 16th October 1950. This demand too I consider legitimate, because when three months total emoluments are to be paid to him, they must be paid to him according to the scale that I have held to be applicable to him. He must be paid dearness allowance at B. B. Singh award rates even for this period. I would repeat that the dispute is about reduction in salary and allowance and this Tribunal would be well within its right if it were to direct that the reduction should not have taken place and that the man must be paid, whatever dues become payable to him, at the proper rate. The notice period pay and allowances would well fall within the amounts due because the fact of those amounts being due is not at all in dispute. It is the rate that is in dispute. He must, therefore, have Rs. 54-12-0 for that notice period of three months.

A statement of account has been placed on the file and the correctness of that calculation is admitted by the bank and so I proceed on the basis of that statement of accounts. I accordingly order that Brij Lal Rawat be paid Rs. 711-2-0 by the bank within two months of the date of the enforcement of the award.

Serial No. 39—

Shri B. K. Chum.

Vs.

Hindustan Commercial Bank.

Reg. Dismissal from Service.

This workman did not attend although served with a notice. He pleaded illness and never turned up during the six or seven months that the dispute has been pending before this Tribunal. It is clear that he has no case.

On page 298 of Sen Tribunal award, we find that Shri B. K. Chum and several others, for example, Sarwan Singh, serial No. 40, were complaining that they had been dismissed by the bank while the case of the bank was that the Ludhiana branch had to be closed because it had been running at a loss from its very inception and that this was done by a regular resolution of the banks' Board of Directors. The workers were duly intimated that their services would be terminated after paying them a month's substantive salary in lieu of notice on the ground of the closure of the Ludhiana office and they would become surplus by reason of that closure.

On the 14th June, 1949, the Board of Directors unanimously resolved that the bank should further consolidate its position by closing unremunerative branches and especially, those which had been giving constant loss. After taking into consideration the figures of the profit and loss of the several branches, Ludhiana

and some other branches were decided to be closed. I am, therefore, quite clear that the retrenchment was *bona fide* and called for by good trade reasons. No relief can be granted to Shri B. K. Chum by way of reinstatement.

From the Sen Tribunal file it appears that the bank issued directions that this worker and Sarwan Singh be terminated after paying them a month's substantive salary in lieu of notice. I do not see why he should not get dearness allowance. I, therefore, order that the dearness allowance due to him, under the rules then in force, should be paid to him by the bank. No other relief is necessary. The payment of D.A. now ordered shall be paid to the workmen by the bank within six weeks of the date of the publication of this award.

Along with this the case of Sarwan Singh, Serial No. 40 may be taken up. The reasons for his retrenchment are the same and this workman also did not personally attend and only wrote to say that if the Tribunal found him deserving of any relief on the records he must be given the same. The reinstatement in his case is not possible.

From the records of the bank, we find that the workmen were paid only one month's substantive salary and not dearness allowance. Salary in lieu of notice would mean salary as well as dearness allowance. I would, therefore, direct that Sarwan Singh be paid Rs. 16 dearness allowance for July 1949. He has already been paid his substantive salary of Rs. 19. The amount of D.A. i.e. Rs. 16 shall be paid to the workman by the bank within six weeks of the date of publication of the award.

Serial No. 41—

Shri Madan Gopal Garg.

Vs.

United Commercial Bank.

Reg. Termination of service.

In August, 1947, he was posted at Okara and he had to leave Pakistan for India on account of the communal riots. Manager of Okara branch asked him to report himself at Amritsar and when he went to Amritsar he was sent to Moga branch, where he worked till the 29th Sep., 1947, on which date he was served with a notice terminating his services.

The bank pleaded that they had to close 12 branches in the West Punjab on account of the communal riots and that they could not find any job for him. He was paid salary upto the 28th September 1947, in addition to one month's salary in lieu of notice and half month's salary as Independence Bonus. The dispute as described in the Reference Order was over 'Termination of service'. At the end of the trial the parties compromised the case as follows:—

"That Mr. Madan Gopal Garg be paid six months' salary and allowance as compensation less one month's salary and allowance already received by him in lieu of notice at the time of termination of his service. The amount due to him thus would be as under;

1. Six months' salary & allowances at Rs. 80 salary & Rs. 30 allowance, Rs. 660.

2. Less one month's salary and allowance, Rs. 110.

Balance Due, Rs. 550. (Rupees five hundred & fifty only.)

(Sd) Seth Gauri Shanker, (Sd) H. L. Parwana,
for United Commercial Bank Ltd. President,

Delhi, the 13th February 1954.

Delhi State Bank Employees Federation.
for Mr. Madan Gopal Garg.

Rs. 550 has been agreed up on by both the parties and the compromise has been admitted by Mr. Parwana on behalf of Mr. Madan Gopal Garg and by Mr. Gauri Shanker Seth, Law Officer, U. C. Bank. Mr. Seth will try to help Mr. Garg to a vacancy in his Bank whenever he has a suitable chance open and the Bank should also appreciate Mr. Garg's attitude in these proceedings which have resulted in a compromise. Award in terms of compromise.

(Sd.) GHANSHYAM DAS.

This amount shall be paid to Mr. Garg within six weeks of the date of the publication of this award.

Serial No. 42—

Shri Balkishen Chandey Hok.

Vs.

Central Bank of India.

Regarding, Refund of security and payment of bank's contribution to the Provident fund.

The dispute as described in the order of Reference was over refund of security and payment of bank's contribution to his Provident fund. He, however, urged in his statement of claim that there were three demands of his from the very start namely: (1) Re-instatement, (2) Payment of security and (3) Payment of bank contribution to provident fund.

He admitted in his statement of claim that the last two demands had been settled and that he should be granted reinstatement with arrears of pay upto date and also Rs. 1,000 for mental worry.

He was at once told that reinstatement with pay up-to-date and damages for mental worries were not within the Order of Reference as at present existing. He realised the force of that objection and assured the Tribunal that the Government would be referring the point of re-instatement in a day or two. No such order from the Government has been obtained by the claimant nor has he cared to attend again. No further proceedings or orders are possible in this case when the dispute as contained in the Order of Reference stood already settled by the bank's payment of the amount of security and bank's contribution to the provident fund.

Serial No. 43—

Shri Vidya Sagar Leekha.

Vs.

Hindustan Commercial Bank.

Regarding Payment of salary from 6th May, 1948 to 28th July, 1948 and one month's salary in lieu of notice and payment of increments.

This dispute was referred to this Tribunal under the Government of India, Ministry of Labour, Order No. LR. 100(89) dated the 12th November, 1953 amended by Order No. LR. 100(89), dated the 19th December, 1953.

The facts of the case as admitted or proved are that Mr. Vidya Sagar Leekha was appointed Godown Keeper in the above mentioned bank at Multan on the 26th June, 1946 in the grade of Rs. 60—6—90 (letter at Ex. 'A'). He was transferred to Bombay where he took over charge on the 2nd January, 1948. On the 26th April, 1948 he proceeded on 10 days *casual leave* and was due back to duty on the 6th May, 1948, but by telegram Ex. P/J., dated the 7th May, 1948, he asked for 15 days' extension saying that he had suddenly fallen ill. This application by wire has the following remarks recorded on it:

'Leave not sanctioned. Keep pending till Mr. Leekha resumes'

but the order is not dated. No reply to Ex.P/J was, however sent to Mr. Leekha by the Bank. This telegraphic application would make Mr. Leekha due to return to duty on the 21st May, 1948 if the extension were in fact to be granted to him.

On the 19th May, 1948 by letter (Ex. D/3) the Bank informed Mr. Leekha that he was due back on the 6th May, 1948, that unless he reported himself on duty immediately he would be liable to disciplinary action. No mention was made in this letter of the telegraphic application for extension of leave as mentioned above. This letter (Ex. D/3) was reinforced by a telegram (Ex. D/2) saying: 'Resume immediately or service will be terminated'. On the 21st May, 1948 the Bank by a letter (Ex. D/4) further emphasised their direction that, 'if he failed to return for duty on Monday the 24th instant he would be deemed to have voluntarily left the service of the Bank and the Bank will proceed to appoint a substitute in his place.'

Mr. Leekha had by a letter dated the 21st May, 1948, asked for further extension of leave by 15 days but this original letter is not available. It, however, appears from Mr. Leekha's letter (Ex. 'C') dated the 26th May, 1948, which is a reply to Ex. D/4 mentioned above that this letter of 21st May, 1948, was duly received by the bank, because letter Ex. 'C' mentions that an application had been made by Leekha on the 21st May, 1948 for extension of leave till the 4th June, 1948 and intimated that 'he was still weak to undertake railway journey at present' and this letter (Ex. 'C') which is dated the 26th May, 1948 is admitted by the bank and was acknowledged by the bank in their letter (Ex. 'D') dated

12th June, 1948. This letter Ex. 'D' informed Mr. Leekha that 'as he has overstayed leave for a long time he has been suspended from bank service and his case has been referred to the Head Office.'

In reply to letter Ex. 'D', Mr. Leekha wrote letter at Ex. 'E' dated the 15th June, 1948 and therein protested against his suspension on the ground that the leave applied for was due to him and that it be treated as privilege leave and sanctioned with pay. He told the bank that he was awaiting the Head Office decision. The Head Office by letter (Ex. D-5) dated the 18th July, 1948 communicated to him through the Bombay Branch their decision that his services had been terminated as he had failed to report for duty as instructed in the previous letters of the Branch, namely, Ex. D/3 and Ex. D/4. The case went up to the Conciliation Officer and he granted him some relief but Mr. Leekha did not agree with the decision of the Conciliation Officer and by his letter (Ex. 'K') asked him to reconsider the case. This reconsideration was made as appears from Exs. 'G' and 'H' but the bank did not agree to the suggestion of the Conciliation Officer and the matter ended there. Then followed the present reference.

Mr. Leekha wants payment for the whole period between his departure on leave on the 26th April, 1948 and the date of the termination of service, namely the 26th July, 1948 by letter (Ex. 5) on the ground that on the 25th April 1948 there was 52 days' privilege leave due to him as follows:

(a) 26-6-46	to	25-6-47	—	s.
(b) 26-6-47	„	25-4-48	—	22 days.

7. The bank contests this mode of calculation of leave saying that he was due only 30 days' leave as per item (a) and that the 22 days leave coming under item (b) had not yet become due and would have become due only on the expiry of the period of 12 months from 26th June, 1947.

The contention of the bank must prevail and there can be no leave due for the fraction of a year of service because leave rules Nos. 11 and 12 of Ex. 'P' read as follows:—

"11. All *privilege* leave shall become due after 12 months' completed service.

12. The period of privilege leave shall be

- (a) 30 days in a year in the case of employees in classes 'A' to 'C'.
- (b) Six weeks in two years in the case of employees in class 'D'."

8. The words in italics above in rule 11 clearly show that privilege leave on the first occasion as well as on the later occasions shall be earned by 12 months of completed service. In rule 12 also the leave earned is 30 days in a year and there is no indication that leave can be earned for any fraction of a year of service. Thus I have no hesitation in holding that only 30 days Privilege leave was due to Mr. Leekha on the 25th April, 1948 when he went on 10 days' casual leave. A man who goes on casual leave ought to have been very careful about overstaying it.

Mr. Leekha's great stress was that he was sick and that although he had not sent a medical certificate along with the applications for leave on the ground of illness there was privilege leave due to him and he ought to have been treated on privilege leave, even if the bank were in a mood to suspect the genuineness of his illness. But he could not claim in any case leave on this ground beyond 30 days in all.

Rule 18 distinctly says that applications for sick leave should be sent to Head Office for sanction *invariably accompanied by a Medical Certificate* from the Bank's Medical Officer and if there is none, from a reliable Registered Medical Practitioner acceptable to the bank. It was the duty of Mr. Leekha to have sent such a medical certificate alongwith his application. He complains that the bank never asked for such a medical certificate and that if the bank had asked for it he would have supplied it. The bank never granted him sick leave, never agreed to the extension of his leave after the 6th May, 1948 and on 19th May asked him to join immediately on pain of disciplinary action. There is no doubt that they did not communicate to him in so many words the refusal of sick leave asked for in the telegram of 7th May, 1948. This is the only circumstance in his favour but I cannot excuse him from the duty of attaching a medical certificate to this sick leave application. He has pleaded ignorance of the leave rules but I cannot accept such a plea in regard to leave which is a matter of vital importance for a worker. I will treat him on privilege

leave for 30 days and this simply because the Bank did not in time intimate to him the rejection of his first application for extension of leave.

9. It has been vaguely suggested that a medical certificate was produced before Sen Tribunal and this suggestion is based on the language of the award of that Tribunal which reads as follows:

"On the 4th June, 1948, he again applied for leave backed by medical certificate dated the 21st May, 1948....." Mr. Leekha has not been able to show me any such certificate on the file of that Tribunal which was duly called and examined. The statement seems to have been made inadvertently in the award. The result is that *no sick leave can be allowed to him beyond 25th May, 1948.*

10. Overstaying leave is misconduct and the usual procedure of a charge sheet followed by an explanation of the accused and the recording of evidence on both sides is now an established necessity before ordering dismissal. The dismissal is thus not in order but reinstatement is not asked for and compensation alone shall have to be awarded.

11. Now we come to the rate of pay which Mr. Leekha could claim from the bank. Mr. Leekha claims an increment on the 26th July, 1947, namely Rs. 6 making his pay Rs. 66. Under the Divatia's Award he was due to have the grade of Rs. 65-5-90 from 2nd January, 1948 and as he was already drawing Rs. 66 on that date he would be entitled to the next higher place in the grade i.e. he would be entitled to Rs. 70. The Bank, however, argues that his appointment as a Godown Keeper on the 26th June, 1946 required confirmation before he could earn an increment and that the practice of the bank had been that no confirmation of a Godown Keeper was made till after two years' satisfactory service, that before he could be confirmed as Godown Keeper he was appointed as a clerk on the 1st March, 1947 and that as a clerk he could earn increment only after he was confirmed, and that clerks get their confirmation only after 6 months from the date of appointment as such, that his increment would be due only on the 1st September, 1948 i.e. 12 months after his confirmation as clerk on 1st September, 1947. No confirmation order has been recorded by the bank in favour of Mr. Leekha and the reason given is that partition of the Punjab had disturbed things. I have carefully considered the matter and see no merit in the bank's case on the point of increments. The appointment letter of Leekha as Godown keeper definitely puts him in the grade of 60-6-90 and nowhere does it say that he was being appointed on a temporary basis or on probation. The definite declaration of the Grade to which he was being appointed leaves no doubt that he was being appointed to a permanent post from the very beginning and that there was no question of confirmation later on. We have also to remember that as a Godown Keeper Mr. Leekha was not coming as a raw hand. He, as his service record (Ex. 'N') shows, had worked as a Godown keeper for four years in the Punjab National Bank, Multan City and as a clerk also. I am quite clear also that there was no question of confirmation as Godown keeper in his case. The appointment as a clerk must have been the subject of an order and that order has not been produced. This would clearly lead to the presumption that the appointment as a clerk was also permanent. The bank has not even produced any rules on the subject of confirmation. I, therefore, accept the case of Mr. Leekha with regard to increments and hold that he would be entitled to

Rs. 66 from 26th June 1947 i.e. on expiry of one year's service as Godown keeper.

Rs. 70 on 2nd January 1948 the date of operation of Divatia's Award which places him in the grade of 65-5-90.

Now we come to the various amounts claimed by Mr. Leekha.

(a) Rs. 72. This item is allowed only to the extent of Rs. 66 on account of increment at Rs. 6 per mensem from the 16th June, 1947 to 25th May, 1948.

(b) Rs. 12-13-0. No increment can be allowed after the 25th May, 1948, as I am not allowing any leave allowances after that date. Disallowed altogether.

(c) Rs. 34-4-0. Leekha claims Rs. 5 per mensem from 2nd January 1948—date of operation of Divatia's Award on the ground that he was given only Rs. 65 per mensem by the bank while he should have been given Rs. 70. This is true. The amount due would be for the period 2nd January, 1948 to 25th May 1948, that is, Rs. 29-4-0 and this amount only is allowed.

(d) Rs. 10-5-0. This is disallowed altogether for the reasons given under item (b).

(e) Rs. 155-12-0. Mr. Leekha claims total emoluments at Rs. 100 per mensem from 6th May 1948 to 25th June, 1948, but I have allowed him leave pay till 25th May, 1948 and he can have 20 days leave pay only i.e. Rs. 64-8-0, which is allowed to him.

(f) Rs. 110. This is disallowed for the reasons given under item 'b'.

(g) Rs. 105. He claims one month's notice pay including dearness allowance, i.e. Rs. 75 basic pay and Rs. 30 D.A. I have disallowed him leave pay after the 25th May, 1948, because he never sent any medical certificate and no bank could afford to allow its workers to stay at home without proper application supported by proper certificate. A bank must of needs insist upon regular attendance without unnecessary absence. This much alone can be conceded in favour of the bank. I have for that reason not allowed any suspension allowance even to Mr. Leekha but the bank had no business to dismiss him without calling him to explain his conduct and the propriety of the punishment proposed against him. This apparently was not done. I must allow him one month's notice pay including dearness allowance. The basic pay shall not be Rs. 75, because the annual increment on account of the fixation of pay in January, 1948 at the enhanced rate of Rs. 70 will start the increment period from January, 1948 and not from the previous period of 26th June, 1948. The pay in the month of May would be Rs. 70. I, therefore, allow him Rs. 100 i.e. Rs. 70 pay and Rs. 30 dearness allowance.

I have not forgotten that dismissal was not the inevitable punishment in this case. I do realise that the bank never asked Leekha to prove his illness before dismissing him and simply on the ground of staying at home without proper application backed by a proper medical certificate, the punishment need not be dismissal and some relief has i.e. one month's pay been given to the worker to enable him to find some alternative employment. The total amount allowed comes to Rs. 259-12-0. From this, must be deducted the admitted payment of Rs. 42-8-0. I order the bank to pay Rs. 227-4-0 to Mr. Leekha with costs Rs. 22-4-0 to make the round figure of Rs. 250.

When the case went up before Sen Tribunal it was still pending with the Conciliation Officer and no action was taken in the absence of a reference under section 12(5) of the Industrial Disputes Act. The plea now taken was that the bank did pay Mr. Leekha all that the Conciliation officer did order. That is true but Mr. Leekha never accepted the Conciliation Officer's decree and the Conciliation Officer had not been able to obtain Mr. Leekha's consent to his order. There was thus no settlement and now that the reference has been made to this court the dispute has to be decided according to law. The reference was under section 10(1)(c) and not under section 12(5) but it is not necessary that the reference should be under section 12(5), for a reference under section 10(1)(c) can cover cases which falls under section 12(5)—See Halder's commentary on Industrial Disputes Act, page 113.

Serial No. 44—

Shri Kesho Charan.

Vs.

National Bank of India.

Regarding forced retirement from service.

Mr. Kesho Charan in his statement of claim alleges that he was verbally ordered to leave the bank on the 7th May, 1948 on a pension of Rs. 73 plus usual allowances given to pensioners as also 85 days leave from that date to the 31st July, 1948, so that the pension took effect from 1st August, 1948. He has related how the bank on account of a strike of the employees in the Bombay branch in 1945 took steps to revise the salaries and ordered on the 29th Nov., 1946, the payment of ten per cent of one year's salary to him as if his salary were to be taken as Rs. 185 per mensem, that about the end of 1947 the bank decided not to have three grades as contemplated in December, 1946, but only two grades namely, grade No. 1 of Rs. 250, and grade No. 2 of Rs. 175, that under this two grade system, his salary was raised from Rs. 155 to Rs. 175. His complaint is that by reason of his seniority he should have been put in the first grade of Rs. 250 and that he was not given that grade because the bank was bent upon retiring him and was planning devices to terminate his services.

On the 2nd April, 1948 he wrote to the London office direct a letter Ex. D/VIII. He made a grievance of his not being placed in the first grade and prayed that his salary should be at least calculated at the rate of Rs. 185 per mensem, i.e. the salary on which he had been paid the cash bonus of 10 per cent. He added, "I do not mind if I am to retire but the hateful and dishonourable treatment as described above, in the last days of my service is unbearable. Then on the 5th April, 1948 by letter Ex. D/3, he wrote to the Manager, Delhi that he had to come early in the morning and leave the office at 7 p.m. and that it was regretted that his health did not allow him to continue the service.

This letter Ex. D/VIII was forwarded by the London office to the Delhi office for comments. The latter office in letter dated 22nd April, 1948, Ex. P/14, pointed out the bad work done by the applicant and also his objectionable behaviour which served as a bad example to others and recommended that his application for retirement may be accepted. It also explained the cases of three persons who had not been put into the first grade namely, Shri Kesho Charan and two others and added that those three cases were to be reconsidered in January 1949, provided their work in the meantime showed necessary improvement. On the recommendation of the Delhi office the London office permitted Kesho Charan to retire and he actually retired on the 1st Aug., 1948, he having been granted leave from 7th May, 1948 to the 31st July, 1948.

Shri Kesho Charan has urged that his was a case of forced retirement, because he was not given proper salary which his seniority entitled him to and he pressed that he should be reinstated and that in any case he must be given the pay of Rs. 185 a month, on which his cash bonus was calculated from 1st July, 1946 to 31st December, 1946 and pay at the rate of Rs. 250 and allowances from 1st January, 1947 to the date of his reinstatement after deduction of the actual pension amount received by him.

He further prayed that as he had to go to the Civil Court for compensation for forced retirement he had to spend Rs. 694-4-0 and Rs. 531 in that litigation and that this total sum of Rs. 1,225-4-0 should also be paid to him.

He prayed in the alternative a higher pension namely, 2/3rd of a salary of Rs. 250 according to the Pension Rules of 1920 from 1st August, 1948, that the average of the last five years' salary should not be taken into consideration for the purpose of fixing the pension amount as he was forced to retire.

The bank replied that he was not forced to retire, that he himself asked for permission to retire and that permission applied for was granted to him. It is also pleaded that the first grade was not given to him, because of his bad work and bad behaviour, that he could have continued in service and fought for the first grade especially, when the prospect of reconsideration of the question of his salary in January following had been before him. The pay of Rs. 185, it was stressed, was a tentative measure only for the purpose of calculating the cash bonus, that it was definitely intimated to the staff that that tentative basis had nothing to do with the ultimate decision that the bank was to take with regard to the fixation of salary later on. The plea of *res-judicata* was also taken against the present claim in so far as the Civil Court had already decided the case of compensation for forced retirement, against the present claimant not only in the original court but also on appeal. The following issues were framed in the case:

1. Was Mr. Kesho Charan wrongfully forced to retire?
2. If so, is he entitled to be reinstated, and
3. Can this Court grant any compensation in face of failure of Civil Suit?
If compensation can be granted what should the compensation be allowed to him?

I will first take the plea of *res-judicata*. From the copies of the judgments of the Subordinate Judge and the Additional District Judge, one gathers that the question of forced retirement was thoroughly gone into and the retirement was held to be not a forced retirement. Suit for compensation was accordingly dismissed by the original Court as well as by the Appellate Court. The usual argument that the plea of *res-judicata* is not available in Industrial disputes has been pressed by the claimant. In the first place, we are not dealing with the effect of a decision of an Industrial Tribunal but with the effect of a decision of a Civil Court. Section 11 of Civil Procedure Code would bar the re-adjudication or re-trial by any other Civil court of the points decided finally by the Civil Court of this place. The only point then is whether this Industrial Tribunal is also barred from re-trying those issues. In my humble opinion, a dispute that has already been decided by a Civil Court does not remain a dispute and stands resolved by the decision of the Civil Court or in other words, the cause of action is replaced by the decree of the court. I am quite sure that if the decision of the Civil Court had been known to the appropriate Government it would have never sent up the case for re-adjudication. As it is I have to find that the dispute with regard to compensation for forced retirement had ceased to exist before the date of this present reference, because the appeal even had been disposed of on 5th October, 1951. Ex. D/5 is the judgment of the Additional District Judge, Delhi in appeal.

It has been urged before me that the Civil Court could not have granted reinstatement and that as the present claim is for reinstatement and for compensation the whole claim can be entertained by this Tribunal. I am quite aware that in regard to a relief which the Civil court could not grant the claimant might have to approach this Tribunal and this Tribunal could go into the question of reinstatement. But it must not be forgotten that the issue of forced retirement having gone against the man this court could not go into that issue again. I have also to mention here that in a recent decision reported as 1954-II-LLJ.p/195, *Muzdoor Union Sugar Factory Versus Saksaria Biswan Sugar Factory Limited*. The Labour Appellate Tribunal of India have considered the question of the applicability of the rule of *res-judicata* to industrial disputes. After fully examining the arguments given in the leading case of *Sugar Mills of Bihar and their workmen*, reported as 1951-I-LLJ (p/474, they fully agreed with the view taken in that case but added that although the rule of *res-judicata* as embodied in Section 11 of Code of Civil Procedure, cannot in terms apply to industrial disputes, the recognition of the principle of the finality of a judgment between the same parties cannot be ruled out even when the matter involved is raised before an Industrial Court, if the matter has been directly and substantially raised and adjudicated upon in the previous proceedings and is directly and substantially in issue in the subsequent proceedings, for, they said, the rule of *res-judicata* is not merely a rule of technicality but a rule of general application based upon the principle of public policy and is meant to prevent multiplicity of suits and to save the parties from being vexed twice over for the same cause. They proceeded to say that the reason for not applying the rule of *res-judicata* to industrial awards is that in most cases it would conflict with the fundamental concept namely, maintenance of industrial peace and promotion of harmonious relations between capital and labour, for the same reason the rule of finality must be observed in industrial courts in *appropriate cases*, for, otherwise unrest may be created in the industrial sphere and harmonious relations between capital and labour may be disturbed and the defeated party may be encouraged to raise the same point over and over again in the hope of ultimate success. They concluded by saying that the rule of *res-judicata* must, therefore, apply to awards given in respect of industrial disputes when the facts and circumstances existing at the time of the prior award continue to remain the same. They quoted with approval the view taken by Shri F. Jeejeeboy in the case of *Tinplate Company of India, Ltd. Golmur versus their workmen* (1949-I-LLJ. 392). as also the case of *Cawnpore Tannery Ltd. Versus Shri Mohamediya and others* (1952-II-LLJ. 423). I have italicised the words, 'appropriate cases'. Even if, the previous decision were by an Industrial Tribunal this Tribunal would certainly consider the present case as an appropriate case for applying the doctrine of *res-judicata*. But here we have a decision of a regular Civil court upheld by the Court of Appeal and I would certainly consider that decision as a final decision on the points in issue which no court or Tribunal should disturb. But independently of the rule of *res-judicata*, I have every reason to hold that the retirement is not a forced retirement. Shri Kesho Charan should not have asked for permission to retire if he felt dissatisfied with the grade of pay given to him. He should have stuck to his guns and raised a dispute over the refusal of higher grade to him. How can we say that he was forced to retire when he wants permission to retire and that permission is granted to him. He could have at any time withdrawn his application for permission. While availing of that permission he must be taken to have voluntarily retired and exercised a choice suitable to his own temperament and personal circumstances of health etc.

The grievance about the refusal of the higher grade is also not worthy of serious attention. From Ex. P/16, which gives the confidential report on his work, we find that as early as 31st January, 1942, he was described as, "Rather full of mistakes but seems to try". In March, 1944, he is merely described as 'satisfactory'. In 1945, he is again dubbed, 'poor typist'. In January, 1946, his work is described as, 'not upto standard'. In June, 1946, remarks about him are, 'while not a proficient typist, his conduct and attendance may be judged as good'. In June, 1947, the remarks are, 'should be retired as soon as a proficient substitute can be obtained'. This remark is by Mr. Leask, who on the 17th January, 1948, modified his remarks as follows:—

'Seems to be making some efforts but the results are not upto the required standard. English spelling and composition very poor'.

Shri Kesho charan lays great stress on the remarks of June, 1947 and argues that the bank had made up its mind to retire him but it is conveniently forgotten that these remarks were confidential and only showed his bad work which had been noticed ever since 1942. With that record, Shri Kesho Charan cannot complain that the management wrongly exercised their admitted right of regulating promotion. That management right has been acknowledged by the Labour

Appellate Tribunal in the case of Molvi Mohd. Ishaq and Assam Oil Company Ltd. (1954-I L.L.J. 778). The same view was taken by the Labour Appellate Tribunal in the case of Uttar Pradesh Electric Supply Company Workers Union (1951-I L.L.J. 456), where it was emphatically declared that in the matter of promotion from one grade to another efficiency and other qualifications count besides seniority and that in the matter of promotions it is the management and the management alone which is to decide the matter. The same Tribunal in Uttar Pradesh Electric Supply Company Limited, Allahabad case (1952, L.A.C. 346) observed that *it would be laying down a dangerous principle to hold that matters of promotion an outside body may substitute its judgment, for the personal knowledge of the manager or of the authority empowered to promote. Unless Shri Kesho Charan shows bad faith on the part of the bank this Tribunal is not competent to override the decision of the management. That bad faith is absolutely lacking when we are faced with the records of this man as detailed above.*

The Civil Court could not grant reinstatement but this Tribunal too is on merits unable to grant reinstatement, first, because the retirement is not forced and was the claimant's own choice and secondly, because he is already past 60 having been taken in service in 1914 and is altogether superannuated by this date, which is 40 years after his date of employment.

In so far as I have held the retirement to be voluntary, he ceases to be a workman there is no question of compensation being admissible to the claimant. As regards the alternative relief of enhanced pension, it is inadmissible by reason of our having found the refusal of promotion to him as not open to attack before us in the absence of any proof of bad faith. The salary of Rs. 250 upon which he calculates his pension was never granted to him and that would end the matter. The pension was rightly calculated on the salary actually enjoyed by him.

In the result, the claimant deserves no relief at all.

Serial No. 45—

Shri A. R. Gupta.

Vs.

Prabhat Bank Ltd.

Regarding Termination of service.

His services were terminated by order dated the 24th July, 1948 and he is challenging the termination.

The preliminary issue in this case is whether the claimant, the Manager of a Bank, falls under the definition of a workman, for, if he is not a workman as defined in the Industrial Disputes Act, this Court can have no jurisdiction in respect of his dispute which would not be an industrial dispute. The matter has been fully discussed by Mr. Justice Bindbasni Prasad in the U.P. Conciliation Board's Award under clauses (j) and (k) and his dictum forms the basic authority on the point. He has laid down that it is the nature of the work done by the employee and the degree of his responsibility which determine whether he is a clerk or an officer, that his designation does not matter nor does his salary form a determining factor under the definition of workmen in the Industrial Disputes Act. Thus if an employee performs work of a clerical nature with no responsibility of an Officer, he is not deprived of the privileges and protection afforded to him by the Industrial Disputes Act, and similarly if an employee has the responsibilities of an officer, but a part of his work is that of clerical nature, he is not a Clerk but an Officer. In order to be a workman, he should show that the essential part of the work assigned to him is of a clerical nature and his responsibilities are not those of an officer. Then he proceeded to explain the distinction between a Clerk and an Officer with special reference to Banks. "An Officer is one who has responsibilities of a directional and controlling nature within the scope of his authority. Powers such as passing final orders for payments, signing receipts and documents on behalf of the Bank, appointment or punishment or both of the subordinate staff and grant of leave to the staff are some of the attributes of Officers. There may be an Officer who may not possess all these attributes; nevertheless he may be an officer. The test is whether his duties and responsibilities are of a directional and controlling nature. Similarly, there may be a clerk who may possess any of these attributes in a restricted degree. A clerk does work of a routine or mechanical nature and has no responsibility to take final decisions in most of the matters which come in his hands.

Shri A. R. Gupta was examined and he had to admit that he signed the salary bill for the whole staff for August, 1947, Ex. 11, and this he signed as Manager. This bill shows that there were 10 hands under his control, that is, Accountant, Head Clerk, Head Cashier, Clerk, Cashier and five persons of the subordinate staff as distinguished from the clerical staff. As he signed this bill and granted a certificate of disbursement as well, the entries therein can be presumed to be correct and I ignore his efforts to change the designations of some of these members of the clerical staff in order to minimise their position and the position of the whole office.

He further admitted that he used to operate the banking accounts of Prabhat Bank with the other Banks and this is one of the prominent responsibilities placing him under the category of an Officer. He tried to minimise his powers by saying that he did not recollect whether the Prabhat Bank's banking accounts were operated by him under his sole signature or under joint signatures of himself and the Accountant. That does not in any way curtail his responsibility.

He also admitted that he used to countersign details of the cash as given by the Cashier without checking it with the actual cash every day but he had to admit that he used to check it occasionally and took shelter under his weak memory when he was asked to reply as to how many times in a week or a month he used to count the cash actually. I can very easily hold that he is not telling the truth and that as the first man in the Branch the least he was expected to do and that he must have been doing was to count the cash at the end of the day.

It is in his statement that all cases of promotion passed through him and he tried to take away the effect of his admission by saying that he could not remember if there was any case of promotion in the whole office during his time. In any case, it is clear that it was within his power to recommend promotion of his subordinates to the proper authority. One thing that he admitted without qualification was that all vouchers in the Bank were countersigned by him as Manager. When asked if he used to pass vouchers for charges general and petty payments, which are generally known as contingent expenditure, and without which no office can be run in actual practice, he once again stated that he did not remember. It is very easy to hold that the vouchers for contingent expenditure were passed by him for there was no other person immediately present in the office who could do this in the presence of the Manager. He stated that he used to do clerical work also, for example, making of vouchers and statements and posting of ledger, but of this he has not been able to give any proof. He, in fact, dared not face the situation and on the day of evidence he absented himself.

His own statement brings him within the category of an Officer of a Bank according to the test laid down by the basic authority from which we have quoted an extract. He had the power of passing final orders for payment, signing receipts and documents on behalf of the Bank, recommending promotion of his subordinates, and these three important powers take him out of the category of workmen and it does not matter if he does not possess all the attributes mentioned in the extract quoted above.

In this connection, it is also worthy of notice that upto now there is no case in which a Manager was ever held to be a workman. On the other hand, in the case *Bank of Bikaner Versus Goyal*, reported as 1953-II, LLJ.p/334, even an Assistant Manager was held to be an Officer. Sen Tribunal on page 60 in paragraph 131 remarked, "We do not, therefore propose to consider in this award matters which have not been raised by a sufficiently large number of workmen and which do not appear to affect them except remotely or indirectly. Such matters, for instance, would be questions of pay, etc. of Managers and Assistant Managers. Questions relating to head clerks, supervisors or departmental in-charges were considered by Mr. B. B. Singh and are of more interest to workmen, for they may normally expect some day to be promoted to such offices. In his award as the dispute relating to the Central Bank of India Ltd. (Calcutta branches), Mr. S. K. Sen said, 'Normally, of course, the workmen are not concerned with the terms of employment of the officers. The case of supervisors is, however, different. Supervisors are comparatively low paid officers and they have become members of the Employees' Association which is registered under the Trade Union Act'. Mr. A. R. Gupta included Head-cashiers in his award."

It is apparent that the position of a Manager was always held to be the position of an Officer and that the Sen Tribunal did not stop to give reasons for that view and that none of the Managers ever cared to put before the Tribunal their claim to the protection of the Industrial Disputes Act.

Before parting with the case, I have to point out that Shri A. R. Gupta held a power of attorney from the Bank. He makes much of the circumstances that

advances were finally sanctioned by the Local Director. As laid down in the extract from Mr. Justice Bindbasni Prasad's remarks, an Officer may not have all the powers and he may be subject to some control in respect of those responsibilities. I have absolutely no doubt that a Manager with the powers which Shri A. R. Gupta was possessing, is not a workman as defined in the Industrial Disputes Act.

Shri A. R. Gupta was quite aware of the weakness of his position and he had already lodged a civil suit in the Meerut Court and wanted this Tribunal to stay the present proceedings. The issue as to jurisdiction of this Tribunal was an altogether independent issue and had nothing to do with the issues in that civil suit. The application for the stay of these proceedings was rejected.

The result is that the present dispute is not an industrial dispute as Shri A. R. Gupta is not a workman and he cannot be given any relief by this Tribunal which has no jurisdiction in disputes other than industrial disputes.

(Sd.) GHANSHYAM DAS,

Industrial Tribunal Delhi.

[No. LR-100(89).]

New Delhi, the 19th November 1954

S.R.O. 3478.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri S. P. Ghose and two others, workmen of Bhulanbararee Colliery, P. O. Patherdih.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION No. 203 OF 1953

(arising out of Reference No. 6 of 1952)

In the matter of an application U/s 33A of the Industrial Disputes Act 1947.

PRESENT

Shri L. P. Dave, B.A., LL.B.—*Chairman.*

PARTIES

1. Shri S. P. Ghose, 2. Shri Sheik Aulad Ali, and 3. Shri Sankar Rai,
Workmen of Bhulanbararee Colliery, P.O. Patherdih—*Complainants.*

Vs.

Management of Bhulanbararee Colliery, Bhulanbararee Coal Company Limited, P. O. Patherdih, Dt. Manbhum, Bihar—*Opposite Party.*

APPEARANCES

Shri D. L. Sen Gupta, Advocate, Calcutta, and Shri Kanti Mehta, General Secretary, Bihar Colliery. Mazdoor Sangh, Opp. Imperial Bank of India, Dhanbad—*for the complainants.*

Shri A. C. Mullik, Advocate, Dhanbad, and Shri D. Basu Thakur, Solicitor, M/s. Orr. Dignam & Co., Calcutta.—*for the opposite party.*

AWARD.

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainants alleged *inter alia* as under:—

During the pendency of Reference No. 6 of 1952, the opposite party dismissed the complainants on or about 19th July 1953 without the express permission from the Tribunal and thereby contravened the provisions of Section 33 of the Industrial Disputes Act. Complainant No. 1 was Overman in charge of Pit No. 2 of the Bhulanbararee colliery and complainants Nos. 2 and 3 were Deputy Overmen. They were served with charge sheets to which they gave replies. No enquiry was held thereafter and there was no evidence against them, and still

they were dismissed. In doing so, the opposite party acted *mala fide* and was influenced by extraneous considerations. The complaints were not responsible for the robbing of pillars which was the charge levelled against them. The complainants had joined a new union formed under the Indian National Trade Union Congress and were office bearers thereof. It was because of this that action was taken against them. They therefore urged that they should be reinstated with payment of back wages and compensation.

3. The opposite party contended that a major accident took place in pit No. 2 of the colliery on 5th July 1953. Complainant No. 1 was the Head Overman and complainants Nos. 2 and 3 were Deputy Overmen in charge of two different shifts in the district where the accident occurred. The accident was due to widening of an old gallery which caused the roof to collapse. The minors had worked in the fenced up area during the night shift and this could only have been done with the knowledge or connivance of complainant No. 3 and a close inspection of the North Mine showed that systematic pillar robbing was going on for sometime past. This meant that the Head Overman and all the Deputy Overmen in this section were guilty either of connivance or of negligence in duty. They were duly charge sheeted and as the offence against them was proved, they were dismissed. It was further urged that the allegations about action having been taken against them because of their alleged trade union activities were not correct. It was also urged that the duties of the overman and deputy overmen were statutory and supervisory and that they were not doing any clerical or manual work and hence they were not workmen.

4. It is an admitted fact that complainant No. 1 Shri S. P. Ghose was working as the Head Overman in the Bhulanbararee colliery and that complainant No. 2 Shri Aulad Ali and complainant No. 3 Shri Shankar Roy and one Shri Kinkar Roy, were working as Deputy Overmen in the three different shifts in that colliery, and all of them were in charge of the particular area where an accident took place on 5th July 1953. It is also an admitted fact that complainant No. 3 Shankar Roy was Deputy Overman in charge of the area from 11 p.m. on 4th July 1953 to 7 a.m. on 5th July 1953. The case of the opposite party is that the accident took place during this period while according to the complainants the accident took place after the duty hours of complainant No. 3 were over. Though the exact time of the accident is in dispute, the factum of the accident is not in dispute. It appears that a roof collapsed, burying four miners who were working there. This portion was in a fenced up area. It appears that these four workmen must have gone to cut coal from the pillars in the fenced up area. The galleries were widened to a considerable extent, with the result that while the four minors were working thereto, the roof collapsed burying the miners and killing them. A detailed enquiry was held in connection with the accident by Mr. Ramnathan, an Inspector from the office of the Chief Inspector of Mines. He found that there had been pillar robbing to a considerable extent at various places. The management issued charge sheets against the present three complainants and also against Kinkar Roy alleging that they had abetted or allowed pillar robbing to take place in the mine and failed to report about the same. They denied these allegations but the management held the charges proved and dismissed them. Kinkar Roy has not filed any complaint but the others have filed the present complaint because they were dismissed during the pendency of Reference No. 6 of 1952 without the permission of the Tribunal.

5. The first objection raised by the opposite party against the maintainability of the complaint is that the complainants were not workmen as defined under the Industrial Disputes Act. It was urged that the duties of an overman and deputy overmen were supervisory and were neither clerical nor manual and they would therefore be not workmen and any dispute regarding their dismissal would not therefore be an industrial dispute. It was conceded before me that unless the complainants were workmen as defined under the Industrial Disputes Act, they would not be entitled to file a complaint under Section 33A of the Industrial Disputes Act regarding their dismissal; that is, the complaint would be maintainable only with regard to those complainants who were workmen within the meaning of the Industrial Disputes Act. The first question therefore for consideration is whether the complainants, or any of them, are workmen as defined in the Act. It is an admitted fact that the complainant No. 1 was Head Overman and complainants Nos. 2 and 3 were Deputy Overmen. The name or designation of the post would not be material to determine whether a person is a workman or not. The real test would be as to what was the nature of his duties. The duties of complainants Nos. 2 and 3 as Deputy Overmen were the same and their case can be considered together so far as the question as to whether they were workmen or not is concerned.

6. I shall first take the case of complainant No. 1 Shri S. P. Ghose who was the Head Overman. He is examined at Exhibit 33. In his Examination in Chief, he stated that he had to maintain several kinds of registers; that he had to issue slips to the workmen for issuing of explosives and other materials; and that he had to write out reports and make entries in several books. He then said that he had also to do manual work; that he had to go inside the mine and test the roofs to see that they were safe, and for this purpose he had to use a stick and sometimes a safety lamp; that he had also to test the props, and to check the loading of tubs; and that if a stone was found in tubs, he would take it out and show it to the loaders and ask them not to load stones. He further stated that he had also to make inspection of joints etc. and get the defects set right and sometime he would himself carry out the repairs, without the help of a fitter, if the defect was of a minor nature. It was therefore urged that he had to do both manual and clerical work and he should therefore be held to be a workman.

7. The duties of an overman are defined by Statute. They are laid down in Bye-laws 36 to 56 of the Bye-laws for Coalmines framed under the Indian Mines Act. I had occasion to consider these duties in detail in a case relating to Amlabad Colliery in Reference No. 35 of 1951. My award in the case has been published in the Gazette of India, dated 9th May 1953, Part II, Section 3, at page 584. After considering all the duties of an overman defined in the above Bye-laws, I come to the conclusion that an overman has not to do any manual or clerical work and would not therefore be a workman. I have carefully considered all the arguments advanced before me on behalf of the complainants and I am not satisfied that the view taken by me in the above case is not correct.

8. The duties of an overman are supervisory. As such, he has to supervise the work of the miners and has also to see that the working places are safe. For this purpose, he has to test the roof and the props and he has also to test the presence of gas. He can do this in various ways. Merely because sometimes he may use a stick or a safety lamp for this purpose, it would not mean that he has to do manual work. As held in the case of the Ford Motor Company Limited, 1950, Vol. II, p. 1149 and 1951, Vol. I, L.L.J., p. 167, if in the course of supervision, a person, whose duties are supervisory, had to do something with his own hands by way of test, it would not be said to be manual work because that work would be a part of his work as a supervisor. Similarly if an overman has to test the roof with a stick or with a safety lamp, that work would be supervisory and could not be said to be manual work and he could not be held to be a workman on this ground.

9. The complainant has then said that occasionally he used to carry out some repairs. He has however admitted that when he found a defect, he usually called the fitter to repair the defect but sometimes if the defect was of a minor nature, he would not trouble the fitter and he would himself repair it. This again would not mean that he had to do manual work. It would only mean that if, in the course of supervision, he found a defect, it was his duty to get the defect set right. For this purpose, he was not supposed to do the work of repair himself but he was supposed to call the fitter. If he did not think it proper to call the fitter on a particular occasion and made the repairs himself, it could not be said that it was his duty to do manual work.

10. He has then said that if while checking the loading of tubs, he found a stone in the tubs, he would take it with his own hand and show it to the loaders and ask them not to load stones. This again would not mean that his duty was of a manual nature. His duty was to supervise and he had to see that the persons were doing the work properly. If any one was making a mistake, he would have to point out the mistake to him and for that purpose he may pick up the stone with his hand. This would not mean that he was doing manual work.

11. It was then urged that he had at least to do clerical work, inasmuch as he has to maintain several registers and to make entries therein. Though in his Examination in Chief, he referred to several registers in which he had to make entries, he admitted in his cross-examination that regarding several of them he had not to do so. For instance, he said in his examination in chief that he had to make entries in the safety lamp inspection book. He however admitted in cross examination that he had only to check the books once a week and write his remarks therein. Most of the other books referred to by him are books relating to his work as a Supervisor. For instance, there is a Pan Stoppage book and he had to make entries therein, if and when there was stoppage of fan. Similarly there is a gas eruption book and he would have

to make entries in it if and when there was eruption of gas. So also he would have to make entries in a mis-fire book, if and when there were a mis-fire. These books have to be maintained under the Mines Act, and the Overmen's duties in respect of these books are included in the bye-laws and regulations framed under the Mines Act. In my opinion, making of entries in these books is part of his supervisory work and would not mean that his duties were clerical when he was making entries in these books.

12. It was then urged that he had to write daily raising reports. He had however to admit that from 1950-51 there was a clerk appointed under him and thereafter all the clerical work was done by that clerk, and he (Head Overman) had only to check this work and sign it. He also admitted that he gave the necessary instructions to the clerk for writing different books and the clerk accordingly wrote them and the Head Overman checked and signed the same. This would mean that clerical work was done by the clerk and not by Head Overman. When the daily rising report books were shown to him, he had to admit that he had only to check these books and write down the total raising of each sirdar for the entire work. This work was again supervisory and not clerical.

13. It was then said that he had to write certain slips. At first he said that he had to write overtime slips. Later on, he admitted that he had not to do so. It was however said that he had to write out slips for the issue of explosives and other materials. It does appear that he had to do this work. This work was however of a very minor nature and would not make the head overman a workman in the sense that his duties were clerical.

14. His duties were in the main supervisory. He was Head Overman and had to supervise the work not only the work of miners and other workers but also that of the Deputy Overmen. He was almost in charge of his department. He may have to write some slips and this he may have to do every day; but compared to his entire work, this work of writing of some slips for issuing of explosives and other materials was of a very minor nature. A person can be said to be a workman only if his duties in the main are of clerical or manual nature; otherwise he cannot be said to be a workman.

15. Looking to the work that complainant No. 1 had to do, I think that his duties were mainly supervisory. He had not to do any manual work at all. Most of the work of making entries and remarks in the registers was part of his supervisory duty. The only work which can be said to be clerical was the writing of some few slips but this could not be taken to mean that his duties in the main were clerical.

16. In this connection, I may also point out that he has admitted in his deposition that an Overman need not be necessarily literate and that if there is an illiterate Overman, he would get his reports written by someone else and he would put his thumb mark thereon. This also would mean that his duties were not clerical. On the whole, I hold that the complainant No. 1 was not a workman as defined in the Industrial Disputes Act and his complaint would therefore be not maintainable.

17. Coming to the case of complainants Nos. 2 and 3, they were working as Deputy Overmen in charge of different shifts. During the time that a Deputy Overman was on duty, he had to perform all the statutory duties of an Overman or a competent person as laid down in the Coalmines Bye-laws and regulations. These duties, as I mentioned above, are purely supervisory and do not involve clerical or manual work. All the remarks made by me regarding the duties of an overman apply here also and these complainants could not be called workmen on this ground.

18. The case of these two complainants is however different; because in addition to their normal and statutory duties as Deputy Overmen, several other duties of a clerical nature have admittedly been entrusted to them. Admittedly almost all collieries maintain a clerk known as Underground Munshi, whose duties are to write out the names of miners and to note against each miner the number of tubs of coal cut by them and to keep a record of tubs allotted and sent out of the mines. They have also to keep the record of tubs supplied to different miners. These duties which are ordinarily performed by underground munshis in other collieries are performed by Deputy Overmen in this mine. Mr. Talbot, the manager of the mine, in his deposition (Exhibit 75) admitted that they have no underground munshi in their colliery. He also admitted that Deputy Overmen have to make a note about the number of tubs supplied to the different miners and also to make a daily record of the total tubs loaded in the different shifts. They have also to maintain records showing the number

of tubs loaded by each individual miner and it is on the strength of these records that the bills of wages of different miners are prepared. The daily raising books have been produced in the case and they show that the names of the miners were written therein by the Deputy Overmen and the Deputy Overmen also note against the name of each individual miner the number of tubs loaded by him.

19. In addition to the above work, the Deputy Overmen have also to prepare a statement of overtime work done by different workmen. This is admitted by the manager Mr. Talbot. He however urged that it was the statutory duty of a Deputy Overman to do so. On being further questioned, he admitted that the Statute only requires that the management should maintain a record of overtime work done by different workmen; but the statute does not require that this record should be maintained by Deputy Overmen. He also admitted that it was not one of the statutory duties of a Deputy Overman to maintain these records.

20. Thus so far as the Deputy Overmen are concerned, they had to do several kinds of clerical work in addition to their normal statutory duties of supervision in the mines. The clerical work done by them is not of a small or minor nature; because, as I said above, they have to maintain records showing the names of the miners and the work done by them day by day and also the overtime work done by them and it is on the strength of those records that their bills are prepared. In my opinion, therefore, the Deputy Overmen of this colliery would be workmen as defined by the Industrial Disputes Act; because, in addition to their normal statutory duties, they were performing clerical duties (which are performed in other collieries by underground munshis). That would mean that complainants Nos. 2 and 3 are entitled to maintain the present complaint.

21. Coming to the merits of the case, the case of each complainant stands on a different footing. As I said above, it is an admitted fact that a fatal accident took place at the mine on 5th July 1953. The evidence of the manager Mr. Talbot and the Inspector of Mines Shri Ramnathan would go to show that pillar robbing had taken place to an appreciable degree in the mine not only at the place of the accident but at other places also. The management's case is that the pillar robbing could not have taken place without the knowledge or connivance of the Overman and the Deputy Overmen, or at any rate, they were negligent in not detecting pillar robbing and hence they were dismissed. On the other hand, the complainants deny that they knew or connived at the pillar robbing. They also deny that they were negligent. They urged that the action was taken against them because of their union activities.

22. The principles governing such cases are laid down in the well known case of Buckingham and Carnatic Mills Limited, 1951, Vol. II, L.L.J., p. 314. It has been held in that case that in cases of this type, the Tribunal is not sitting in appeal against the decision of the management and should not interfere in that decision on the ground that the decision was erroneous. The Tribunal has to satisfy itself that the action of the management was bonafide, that it had followed the principles of natural justice and that their decision was not perverse and further that there was evidence before them from which it was possible for them to come to a conclusion that the workman was guilty of the charge levelled against him. If this was so, the Tribunal could not interfere on the ground that in its opinion the decision was wrong or erroneous. It is not a court of appeal, but a court of revision. We should bear these principles in mind in deciding the present case.

23. The first thing that must be considered therefore is whether the action of the management was bonafide. In this connection, the complainants have urged that action was taken against them because of their union activities. It is said that formerly some other union was working in this colliery and that later on a branch union of the Bihar Colliery Mazdoor Sangh was formed in this colliery and the present complainants became office bearers thereof and that is why action was taken against them. I am not satisfied about the allegations of the complainants that action was taken against them because of their alleged union activities.

24. According to the evidence of Shri Ghose himself, this branch union of the Bihar Colliery Mazdoor Sangh was started at the colliery in April 1953 and office bearers thereof were elected in July. Apart from this, the inspection of the union books makes it doubtful as to whether the present complainants had really joined the union before the present accident took place. Their names are entered in the register of members on the last page. Names of certain members, who joined the union long after, have been shown on previous pages. It is significant to note that the present complainants' names are shown as members in serial order on the last page of the book. A careful scrutiny of

dates and books would go to show that the complainants were probably not members of the union before the present accident took place but thereafter when action was taken against them, they joined the union, and an attempt has been made to show that they had joined the union earlier.

25. It was urged that complainant No. 1 had been called by the Chief Mining Engineer and threatened in June 1953 for joining the union. There is no specific allegation about this in the complaint. It is true that there is a vague allegation contained in para. 19 of the complaint that the manager and the Chief Mining Engineer had threatened the petitioners with dire consequences even in the second quarter of 1953. No details however are given. The month is not mentioned. It is nobody's case that the complainants Nos. 2 and 3 were threatened by the Chief Mining Engineer. I do not believe the allegation made by complainant No. 1 that he was called by the Chief Mining Engineer in June 1953 and asked to leave the Union and was also threatened. In this connection, I may also refer to the letter Exhibit 47 written by Mr. Ghose to the manager as late as 19th May 1954, i.e., long after the present complaint was filed. In this letter, Mr. Ghose has mentioned that the manager had helped him much in the past and that he was continuing to help him even at the time of writing the note. In this letter, Mr. Ghose has thanked the manager for his kind help and generous behaviour. This letter clearly shows that the allegations made by the complainants in the complaint against the manager are not true. It shows that the management was not actuated by any *mala fide* motives in taking action against the complainants for their alleged trade union activities. In my opinion, the management took action against the complainants because they felt that they were responsible for the accident that had taken place and that the accident may have been avoided if these persons had been more careful. In any case, I think that there was no want of bonafides.

26. Coming to the case of the three complainants, the management urge that there could not have been pillar robbing unless the complainants knew about it and connived at it; or at any rate, they must have been negligent in not detecting it. In this connection, a distinction has to be made between the case of the Head Overman and the Deputy Overmen because their duties are different. It is part of the duty of the Head Overman to inspect the fenced up areas once a fortnight. It is not the duty of the Deputy Overmen to do so. The Deputy Overman's duty is only to see that every fencing of a fenced up area is in tact; but so far as Head Overman is concerned, he is to examine the old working places once a fortnight. He may not actually enter the fenced up area and he may inspect the fenced up area by flashing a light; but this would however mean that an overman would be in a position to detect the case of systematic pillar robbing, as he has to inspect the fenced up areas once a fortnight and at that time at least, he would be able to detect if there had been considerable pillar robbing as was found in the present case.

27. Mr. Talbot has stated in his evidence that pillar robbing was detected when they inspected the mine after the accident, and that this pillar robbing must have been going on for not less than a month before the accident took place. During this period the Head Overman should and would have to inspect the closed areas at least twice and would and should have been able to detect the pillar robbing that was going on. Admittedly however he has not made any report during this period and this would mean that the management were justified in holding that he either connived at the pillar robbing or was negligent in his duties in not detecting it.

28. In this connection, it was urged on his behalf that on various occasions he had made reports to the manager about the pillar robbing but the manager had not taken action and that this showed that the manager connived at the pillar robbing. Every case of pillar robbing should be decided on its own merits. There may be cases where the pillar robbing may not be much. It would not always be necessary or proper that the manager must take action whenever any case of pillar robbing was reported to him. From the fact that the manager did not take action on every occasion, it cannot be said that the manager connived at the pillar robbing. Assuming, however, that the manager was a party in allowing pillar robbing to go on, it would not in any way lessen the responsibility of the Overman. It was part of his statutory duty to see that no gallery was widened beyond a particular limit and even if the manager instructed him to widen a particular gallery, he could not allow that to be done. If the manager was allowing pillar robbing to go on, he may not deserve to remain in that post. But that would not mean that the Overman was free from blame. In this case, I am not called upon to consider the responsibility of the manager in allowing pillar robbing to go on; but on the assumption that he was allowing it, it would not mean that the complainant should not or could not be dismissed.

He failed in his duty as an Overman in not stopping the infringement of the Coal Mines Regulations and the management would be entitled to dismiss him. In this connection, we must bear in mind the distinction between the manager of a colliery and the management or owner of the colliery. The manager is himself an employee and if he fails in his duty, the management may take action against him. If both the manager and the Overman have done wrong, the management would be entitled to take action against both of them. If they took action against only one and not against the other, it would not mean that action against one should be held to be improper.

29. I may also point out that the conduct of complainant No. 1 after the accident and while an enquiry was being held about it would also show a guilty conscience. On his own showing, he did not immediately go down the mine when he learnt about the accident but lost precious time before he did so. When Mr. Ramnathan was holding an enquiry, he unduly interfered with it and Mr. Ramnathan passed strictures against him for this. This would also go to show that he was anxious to see that truth did not come out and this indicated a guilty conscience.

30. On the whole, after considering the evidence and circumstances in the case, I think that the management were justified in dismissing the complainant No. 1. In other words, the complaint of complainant No. 1 would fail both on the ground that he is not a workman and also on merits.

31. So far as Deputy Overmen are concerned, it was not part of their duty to inspect the old working places. Their duty was only to see that the fencing of the fenced up area was in fact. It is therefore quite possible that a Deputy Overman may not know of pillar robbing going on in closed fenced up area during the shifts he was not on duty. For instance, if pillar robbing was taking place in fenced up areas during the shift of one particular Deputy Overman, the other two Deputy Overmen working in the other two shifts would not ordinarily know about it; because if the fencing was removed when the pillar robbing was going on and if it was replaced before the end of that shift, the deputy overman of the succeeding shift would find the fencing in tact and would not be able to detect pillar robbing having taken place in the previous shift. Hence merely because pillar robbing had been going on to a considerable extent for over a month in the fenced up area, it could not necessarily mean that all the deputy overmen were responsible for the same. It may be that one of them may be responsible in either conniving at it or in neglecting it. It is also quite possible that the other two Deputy Overmen may not be aware of the same.

32. There were three Deputy Overmen working in the three different shifts in the area in which the accident took place. Two of them are complainants Nos. 2 and 3. The third is one Kinkar Roy who has not filed a complaint though he has been dismissed. I have therefore to consider the cases only of complainants Nos. 2 and 3 and not of Kinkar Roy.

33. As I mentioned above, merely because pillar robbing of considerable extent took place in the fenced up area, it could not mean that all the deputy overmen were responsible for it. It is, as I said above, possible that one or two Deputy Overmen may be responsible for it and the other or others may not be knowing about it. For instance, it is quite conceivable that pillar robbing may have been going on to the knowledge and connivance of Shankar Roy and Kinkar Roy and still Aulad Ali may not be knowing about it. In such a case, it would not be proper to dismiss Aulad Ali merely because he happened to be one of the Deputy Overmen working in one of the shifts in this area.

34. So far as Aulad Ali is concerned, there is nothing tangible from which it could be inferred that he knew or connived at the pillar robbing or was negligent in not detecting it. I might repeat that it was not his duty to inspect the old or closed working areas and it is not unlikely that he may not be knowing that pillar robbing was going on during the other two shifts. Hence, in my opinion, so far as he is concerned, the finding of the management that he was negligent is perverse.

35. So far as Shankar Roy is concerned, I think that the management had evidence before them from which they could hold him responsible for the pillar robbing going on in the fenced up areas. Shankar Roy was on duty from 11 p.m. of 4th July 1953 to 7 a.m. of 5th July 1953. According to the management, the fatal accident took place during his shift and still Shankar Roy did not give any information about it. On the other hand, Shankar Roy denies that any accident took place in his shift and he says that the accident must have

taken place after he left duty at 8 a.m. In this connection, it is to be noted that the four miners who were killed as a result of the above accident were miners who had gone underground in the night shift of 4th July 1953; that is, they had gone there for duty from 10 p.m. of 4th July 1953 and were supposed to work upto 6 a.m. of 5th July 1953.

36. Complainant No. 3 has stated in his deposition Exhibit 57 that the four miners who were killed were working in level No. 21 and that one Chabila Bhuia who was working in the same shift was working in level No. 22. The evidence of Mr. Talbot the manager and Mr. Ramnathan, Inspector of Mines, would go to show that when they went there, they found three fully loaded and one partially loaded tubs at a distance of about 40 feet from the scene of accident. These tubs were found to contain dry and wethered coal. Such coal could be cut from old working places and not from fresh working places. These four tubs contained tokens which were issued to the four miners who had been killed in the accident. They also found one other loaded tub without a token at some distance and this tub was also found to contain dry and wethered coal.

37. Shankar Roy now says that only one tub was supplied between the four miners as there was short supply of tubs at that time. He has also stated that they had cut the coal and loaded the tub by about midnight or 1 a.m. but thereafter they were sitting idle till 7 a.m. This cannot be believed. The tubs must have been supplied to them earlier and they must have loaded the tubs by cutting coal from the fenced up area. The coal found in the tubs was dry and wethered showing that all the coal was cut from this area. The large quantity of coal that was loaded in these tubs could not have been cut after 7 a.m. as is sought to be alleged by Shankar Roy.

38. In my opinion, tubs were supplied to the deceased workmen by Shankar Roy and these workmen must have began to cut coal and fill the tubs in the fenced up area. This could not have been without the knowledge of Shankar Roy. The workmen must have at least begun to work during the shift of Shankar Roy. The duty of these miners ended at 7 a.m. and it was the duty of Shankar Roy to have asked these people to leave the mine. He does not appear to have done so. It appears that as Chabila Bhuia was also working with these four miners, Shankar Roy wants us to believe that though he had finished his work he had not left the place till 7.30 a.m. He says that he asked Chabila Bhuia to leave the place but he did not do so. I do not believe him. As I said above, I am satisfied that Shankar Roy must have supplied the tubs to these miners and Shankar Roy must be knowing that these persons had started work in the fenced up area. Even if the accident did not take place before he left the colliery, it is certain that he allowed these people to continue to work after duty hours were over. All this shows neglect of duty on the part of Shankar Roy. From the fact that all the coal that was loaded in the tubs supplied to Chabila Bhuia and the four deceased miners was dry and wethered coal cut from the fenced up area, the management were justified in holding that Shankar Roy must have connived at the pillar robbing by these persons from the fenced up area. They were also justified in holding him guilty of negligence. Whether the accident took place before or after Shankar Roy left the place would not be material for the purpose of deciding his responsibility. The fact remains that these people must have started work in the fenced up area before he left and he did not stop them from doing so. The further fact remains that he allowed these people to work even after the duty hours were over. I therefore hold that so far as Shankar Roy is concerned, the management were justified in terminating his services.

39. The result is that the orders of the management in terminating the services of complainants Nos. 1 and 3 are proper and their complaint must fail. So far as complainant No. 2 is concerned, the decision of the management was perverse and must be set aside. It is true that the Inspector of mines had suspended his certificate but this was long after his discharge from service. If the management had discharged him after his certificate was suspended on the ground that he did not hold a certificate entitling him to work as Deputy Overman, the matter may have been different. As it is, however, his services were terminated at a time when his certificate was still in force and before the Inspector of Mines Mr. Ramnathan had made his report in the matter. His certificate was suspended for one year from 30th September 1953. In other words, the certificate would now be renewed. In my opinion, therefore, he would be entitled to be reinstated in his original post of Deputy Overman. Regarding payment of arrears of wages, it may be noted that he could not have worked as Deputy Overman after 30th September 1953 when his certificate was suspended by the Inspector of Mines. Hence even if his service had not been terminated by the management, the management could not have allowed him to

work as Deputy Overman for one year after 30th September 1953. That would mean that he would not have been entitled to get his wages as Deputy Overman from 30th September 1953; but he would be entitled to his wages between the date of discharge and the date of his suspension of his certificate namely 30th September 1953. He would also be entitled to his wages after the certificate is renewed to him.

40. In the result, I would dismiss the complaints of complainants Nos. 1 and 3 (S. P. Ghose and Shankar Roy) holding that they were not entitled to any relief. So far as complainant Aulad Ali is concerned, I would direct that he should be reinstated as Deputy Overman from the date his certificate entitling him to work as Overman is renewed to him and he approaches the management for reinstatement, provided that he approaches the management within one month of the renewal of his certificate. He should also be paid his wages and other benefits as if he was in service from the date of his discharge till 30th September 1953. This amount should be paid to him within two weeks of the award becoming enforceable. The period of absence from 30th September 1953 to the date of his reinstatement must be treated as on leave without pay. In case the certificate of Aulad Ali is not renewed before 31st December 1954, he would not be entitled to be reinstated. In that case, he should be paid a gratuity equal to six months' wages and compensation equal to another three months' wages for his past services and for his wrongful discharge from service. For this purpose wages would have the same meaning as defined under Clause (RR) of Section 2 of the Industrial Disputes Act 1947 as amended by Industrial Disputes (Amendment) Act 1953. This amount must be paid to him before 31st January 1955.

I pass my award accordingly.
The 3rd November 1954.

(Sd.) L. P. DAVE, *Chairman.*
Central Government's Industrial Tribunal, Dhanbad.

[No. LR.2(365).]

ORDERS

New Delhi, the 18th November 1954

S.R.O. 3479.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Talavadi manganese mines of the United Mining and Industries Limited, Bombay, and their workmen regarding the matters specified in the schedule annexed hereto;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby refers the said dispute to the Industrial Tribunal at Dhanbad, constituted under section 7 of the said Act, for adjudication.

THE SCHEDULE

(i) Whether the termination of the services of about 526 temporary workmen in or about the month of June, 1954, was justified and what relief, if any, should be allowed to them

(ii) Whether the suspension and the subsequent discharge of certain permanent workmen in or about the month of June, 1954 was justified and what relief, if any, should be allowed to them.

[No. LR.2(73)/54.]

New Delhi, the 23rd November 1954

S.R.O. 3480.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Bengal Provincial Railway Company Limited and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7 of the said Act.

SCHEDULE

1. Wages and grading (including dearness allowance and allied matters).
2. Confirmation of daily rated staff.

[No. LR-3(55)/54.]

S.R.O. 3481.—Whereas by an Order of the Government of India in the Ministry of Labour, No. LR-3(55)/54, dated the 22nd November, 1954, an industrial dispute between the employers in relation to the Bengal Provincial Railway Company Limited and their workmen has been referred to an Industrial Tribunal for adjudication;

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby prohibits the continuance of the strike in existence in the Bengal Provincial Railway Company Limited, Magra.

[No. LR-3(55)/54/I.]

P. S. EASWARAN, Under Secy.

New Delhi, the 18th November 1954

S.R.O. 3482.—In exercise of the powers conferred by section 5 of the Indian Dock Labourers Act, 1934, (XIX of 1934), the Central Government hereby directs that the following further amendment shall be made in the Indian Dock Labourers Regulations, 1948, the same having been previously published as required by section 7 of the said Act, namely:—

In Forms III to VIII of the Forms appended to the said Regulations under the heading 'Notes' or 'Note', as the case may be, for the definition of 'competent person' the following definition shall be substituted, namely:—

"'competent person' means an official of a workshop in India approved for any of the specified purposes in respect of testing, examination, annealing or certification of plant, lifting machinery or gear by the Central Government or by an authority nominated by the Central Government in that behalf, and any other person who is recognised as a 'competent person' for the purposes of the national regulations in force in other countries for the implementation of the Protection against Accidents (Dockers) Convention (Revised) 1932, adopted by the International Labour Conference."

[No. Fac. 38(71).]

S.R.O. 3483.—The following draft of certain further amendments to the Payment of Wages (Railways) Rules, 1938, which it is proposed to make in exercise of the powers conferred by sub-sections (2), (3) and (4) of section 28, read with section 24 of the Payment of Wages Act, 1936 (IV of 1936), is published as required by sub-section (5) of section 26 of the said Act for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration on or after the 1st March 1955.

Any objections suggestions which may be received from any persons with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft amendments.

In the said Rules:—

1. In rule 6, for the word and figure "and 5", the word and figures "5 and 18(3)" shall be substituted.
2. In rule 21, for the word and figures "and 17", the word and figures "17 and 18(3)" shall be substituted.

[No Fac. 50(27)]

S.R.O. 3484.—In exercise of the powers conferred by sub-clauses (1) and (3) of clause 4 of the Bombay Dock Workers (Regulation of Employment) Scheme, 1951, and in partial modification of the notification of the Government of India in the Ministry of Labour, No. S.R.O. 1259, dated the 9th April, 1954, the Central Government hereby appoints Shri R. F. Boga, I.A.S., Commissioner of Labour, Bombay, as a member of the Bombay Dock Labour Board, *vice* Shri V. V. Joshi, resigned.

[No. Fac. 73(69).]

New Delhi, the 22nd November 1954

S.R.O. 3485.—Whereas the Central Government is satisfied that the employees in the Hughes Dry Dock Engine House belonging to the Bombay Port Trust are in receipt of benefits substantially similar or superior to the benefits provided under the Employees' State Insurance Act, 1948 (XXXIV of 1948):

Now, therefore, in exercise of the powers conferred by section 90 of the said Act, the Central Government hereby exempts the said factory from all the provisions of the said Act.

[No. SS.138(74).]

K. N. NAMBIAR, Under Secy.